TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. ~~229~~. 47.

N. L. REARICK, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF PENNSYLVANIA.

IN ERROR TO THE SUPERIOR COURT OF THE STATE OF PENNSYLVANIA.

FILED JUNE 13, 1905.

(19,801.)

(19,801.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 299.

N. L. REARICK, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF PENNSYLVANIA.

IN ERROR TO THE SUPERIOR COURT OF THE STATE OF PENNSYLVANIA.

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1 In the Superior Court of Pennsylvania, Sitting in Philadelphia, October Term, 1903.

No. 171.

COMMONWEALTH OF PENNSYLVANIA, Appellee,
against
N. L. REARICK, Appellant.

Petition for the Allowance of Writ of Error to the Supreme Court of the United States.

To the Honorable Henry B. Brown, Associate Justice of the Supreme Court of the United States:

The petition of N. L. Rearick respectfully represents:

That he brought a suit into the Superior Court of Pennsylvania, No. 171, October Term, 1903, on appeal from the judgment of the court of Quarter Sessions of Northumberland County, No. 173 May Sessions, 1902, which court had affirmed a judgment of conviction pronounced against your petitioner, the appellant in the Superior Court, by J. P. Carpenter, a Justice of the Peace in and for Northumberland County, in whose court your petitioner was the defendant, as he was also in said court of Quarter Sessions.

That before the said Justice of the Peace your petitioner was charged with having violated the provisions of an ordinance of the borough of Sunbury, in said county of Northumberland, which ordinance was approved Dec. 9, 1899, and by which ordinance it is made unlawful for any person to solicit orders for, sell, or deliver at retail on the streets, or by traveling from house to house within the limits of the borough of Sunbury any goods not of his own
2 production or manufacture, without first having procured a license for the privilege as required by said ordinance.

That at the trial of said charge before said Justice of the Peace your petitioner pled not guilty, and claimed that he was not liable to pay the license tax required by said ordinance to be paid; and that he could not be punished for any violation of said ordinance, because the only act within the purview of said ordinance which he had done was to deliver goods that had been sent to him by his principal, The Citizens' Wholesale Supply Company, from Columbus in the state of Ohio to be by him, as the agent of said company, delivered to persons living in the Borough of Sunbury, state of Pennsylvania, who had previously ordered the same from the said Company through another of its agents. Your petitioner further claimed that in making the delivery of said goods as aforesaid he was engaged in commerce among the states and that he was exempt on that account from the operation of said ordinance. Your petitioner further claimed that said ordinance was void because it deprived persons of liberty and property without due process of law and denied the equal protection of the laws by excepting from its operation persons

who manufacture and produce and also because it applies only to those who sell or deliver at retail.

That the said Justice of the Peace, on the 29th day of June, 1902, notwithstanding the said objections of your petitioner, rendered judgment of conviction against your petitioner for a violation of said ordinance and sentenced him to pay a fine of $25.00 and costs, or to stand committed to the jail of the County of Northumberland for a period of thirty days and until said fine and costs were paid.

That from said judgment of conviction your petitioner appealed to the Court of Quarter Sessions of Northumberland County, which court on the 6th day of July 1903 ordered said judgment to
3 be affirmed. That from said judgment of the court of Quarter Sessions your petitioner appealed to the Superior Court of Pennsylvania, sitting at Philadelphia, which Court on the 27th day of October 1904 ordered the said judgment of said Court of Quarter Sessions to be affirmed and afterwards on the 27th day of October 1904, the said judgment was duly entered and recorded in the office of the Prothonotary of said court at Philadelphia. That your petitioner then filed his petition in the Supreme Court of Pennsylvania, Eastern District, for the allowance of an appeal to said Supreme Court of Pennsylvania from said judgment of said Superior Court; but that said Supreme Court on the 6th day of January 1905 made an order refusing to allow said appeal, which order was duly entered and recorded on the 6th day of January 1905 in the Eastern District of Pennsylvania. Your petitioner further says, that by reason of the refusal of said Supreme Court of Pennsylvania to allow an appeal from the said judgment of the Superior Court as aforesaid, said judgment of the Superior Court is a judgment of the highest court of record in Pennsylvania in which a decision in this case can or could be had. That the judgment of said court is final.

That the right, title, privilege, and immunity claimed by your petitioner before the Justice of the Peace, were claimed by him also before the court of Quarter Sessions of Northumberland county as well as before the Superior Court of Pennsylvania and also in his petition to the Supreme Court of Pennsylvania for the allowance of an appeal, and were claimed under Clause 3, Section 8, of Article 1, of the Constitution of the United States which provides that "Congress shall have power to regulate commerce with foreign nations and among the several states and with the Indian tribes" and also under Section 1 of the 14th Amendment to the Constitution of the United States which provides, that "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of
4 life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

That the decision and judgment of the Superior Court of Pennsylvania aforesaid, were against the right, title, privilege and immunity so claimed as aforesaid.

Your petitioner therefore prays for the allowance of a Writ of Error to the Supreme Court of the United States, in order that the

said judgment of the Superior Court of Pennsylvania may be re-examined and reversed or affirmed in the Supreme Court of the United States, and he will ever pray.

N. L. REARICK, *Petitioner,* [SEAL.]
By MAX L. MITCHELL,
PHILEMON S. KAHSHNER,
His Attorneys.

STATE OF DELAWARE, *County of New Castle, ss:*

N. L. Rearick, being duly sworn according to law, deposes and says that he is the petitioner above named, and that the facts set forth in the foregoing petition are true to the best of his knowledge and belief.

N. L. REARICK.

Sworn to and subscribed before me this eighth day of May 1905.

[Seal of Alton C. Pyle, Notary Public, Delaware. Appointed December 2,, 1902, for Four Years.]

ALTON C. PYLE,
Notary Public, Notary Public, 805 *Shipley Street, Wilmington, Del.*

5 Superior Court of Pennsylvania, Sitting at Philadelphia, October Term, 1903.

No. 171.

COMMONWEALTH OF PENNSYLVANIA, Appellee,
vs.
N. L. REARICK, Appellant.

Appeal of N. L. Rearick from the Judgment in the case in which the Commonwealth of Pennsylvania was plaintiff and the above named appellant defendant, and now, to-wit; May 15th 1905, citation awarded and Writ of Error allowed by me.

H. B. BROWN,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] Petition.

6 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Superior Court of the Commonwealth of Pennsylvania, Greeting:

[Seal of the Supreme Court of the United States.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Superior Court, to No. 171 October Term, 1903 before you, or some of you, being the highest

court of law or equity of the said State in which a decision could be had in the said suit between the Commonwealth of Pennsylvania plaintiff and appellee in said Superior Court, and N. L. Rearick, defendant, and appellant in said Superior Court wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause
7 of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said N. L. Rearick as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within Thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the Fifteenth day of May, in the year of our Lord one thousand nine hundred and five.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
BROWN,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] Writ of Error.

8 UNITED STATES OF AMERICA, *ss:*

To Commonwealth of Pennsylvania, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, with[illegible] thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Superior Court of Pennsylvania, to No. 171 October Term 1903 wherein N. L. Rearick is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error

mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Henry B. Brown, Associate Justice of the Supreme Court of the United States, this Fifteenth day of May, in the year of our Lord one thousand nine hundred and five.

HENRY B. BROWN,
Associate Justice of the Supreme Court of the United States.

On this Sixth day of June, in the year of our Lord one thousand nine hundred and five 1905, personally appeared Harry S. Knight before me, the subscriber, a Justice of the Peace for Pennsylvania resident in Northumberland County and makes oath that he delivered a true copy of the within citation to Aamos Bloom special official for the Commonwealth in the prosecution who expressed his willingness to accept such service on behalf of the Commonwealth.

HARRY S. KNIGHT.

Sworn to and subscribed the 7th day of June, A. D. 1905.
[SEAL.] J. P. CARPENTER, *J. P.*

Commission expires first Monday of May 1909.

9 *Bond.*

Bond on Writ of Error from Supreme Court of the United States.

Know all men by these Presents: That we, N. L. Rearick, as principal, and Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto the Commonwealth of Pennsylvania in the full and just sum of Five Hundred Dollars, to be paid to the said Commonwealth of Pennsylvania, its certain attorney or assigns, to which payment well and truly to be made we do bind ourselves, our executors, administrators and assigns, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the Eighth day of May in the year of our Lord one thousand nine hundred and five (1905).

Whereas lately before J. P. Carpenter, a Justice of the Peace in and for Northumberland County, Pennsylvania, a judgment of conviction was entered against N. L. Rearick, at the suit of the Commonwealth of Pennsylvania, which judgment was afterwards affirmed by the Superior Court of Pennsylvania, in a certain plea and suit in said court, October Term, 1903, No. 171, and the said N. L. Rearick having obtained a Writ of Error to the Supreme Court of the United States to reverse the said Judgment in
10 the last above entitled action, and having filed a copy thereof in the office of the Prothonotary of said court and a citation directed to the said Commonwealth of Pennsylvania, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington the 15th day of June 1905.

Now the condition of the above obligation is such that if the said N. L. Rearick shall prosecute his said Writ of Error to effect and

answer all damages and costs, if he shall fail to make his plea good, then the above obligation to be void, else to be and remain in full force and virtue.

N. L. REARICK. [SEAL.]
FIDELITY & DEPOSIT CO. OF MARYLAND,
By T. L. PAINTER, *Member of Local Board.*

Witness:
ALTON C. PYLE.

Attest: MONMAN & HUDIC, *Ag'ts.*

Approved by
BROWN,
Associate Justice of the Supreme Court of the United States.

STATE OF DELAWARE, *County of New Castle, ss:*

Personally appeared before me Alton C. Pyle, a Notary Public in and for the State and County aforesaid N. L. Rearick who by me duly sworn in due form doth acknowledge the above to be his hand and seal for the purpose herein mentioned.

Witness my hand and seal this the Eighth day of May A. D. 1905.

[SEAL.] ALTON C. PYLE,
Notary Public, 805 *Shipley Street, Wilmington, Del.*

Endorsement: Bond.

11 Superior Court of Pennsylvania, Sitting at Philadelphia.

Among the Records and Proceedings of the Superior Court of Pennsylvania, *inter alia*, the following is thus contained:

Appearance Docket.

Docket Entries.

October Term, 1903, No. 171.

171.

COMMONWEALTH OF PENNSYLVANIA, Plaintiff,
v.
N. L. REARICK, Defendant.

Harry S. Knight
Max L. Mitchell
P. S. Karshner

Appeal of Defendant Q. S. 173 May Sess. 1902 from the Judgment
Appeal from the Court of Quarter Sessions of the County of Northumberland
Filed July 27, 1903
Eo die Certiorari exit

Ret'ble the Fourth Monday of October 1903
August 21, 1903 Service of notice of Appeal filed.
October 24, 1903 Record returned and filed.
12 October 28, 1903 Assignments of Error filed
October 30, 1903 Argued
October 27, 1904 The judgment is affirmed
Opinion by Porter, J.
Henderson, J. dissents.
November 2, 1904 Remittitur exit and with Record sent to the Clerk of the Court of Quarter Sessions of Northumberland County

In Supreme Court of Pennsylvania.

November 25, 1904 Petition for an allowance of an appeal from the Superior Court of Penna. filed on motion of Max L. Mitchell
December 31, 1904 Appeal refused.
Per Curiam
May 22, 1905 Petition for an allowance of a Writ of Error to the Supreme Court of the United States brought into office,
And now, to wit, May 15, 1905, citation awarded and Writ of Error allowed by me."
H. B. Brown, Associate Justice of the Supreme Court of the United States.
13 *Eo die* Bond in $500.00 approved by Brown, Associate Justice of the Supreme Court of the United States filed.
Eo die Writ of Error to the Superior Court of Pennsylvania brought into office.
June 8, 1905 Citation brought into office, allowed by Brown, Justice (with proof of service).
June 12, 1905, Certified transcript of Record exit and sent to the Hon. James H. McKenney, Clerk of the Supreme Court of the United States.

14 *Appeal and Affidavit.*

In the Superior Court of Pennsylvania, Sitting at Philadelphia.

In the Court of Quarter Sessions of the County of Northumberland, May Sessions, 1902.

No. 173.

COMMONWEALTH OF PENNSYLVANIA
v.
N. L. REARICK.

Enter Appeal on behalf of Defendant from the Judgment of the Court of Quarter Sessions of the County of Northumberland.
To Lewis C. Greene, Proth'y Sup. Ct.

MAX L. MITCHELL,
P. S. KARSHNER,
Attorneys for Appellant.

COUNTY OF LYCOMING, *ss:*

Max L. Mitchell being duly sworn saith that said Appeal is not taken for the purpose of delay, but because appellant believes he has suffered injustice by the Judgment from which he appeals.

MAX L. MITCHELL,
Attorney for Appellant.

Sworn and subscribed, before me this 25th day of July A. D. 1903.

B. S. BENTLEY,
Prothonotary, 3rd District.

15 Endorsement: 171 October Term 1903 Superior Court of Pennsylvania Sitting at Philadelphia. Commonwealth of Pennsylvania *v.* N. L. Rearick Appellant Appeal and Affidavit. Filed in the Superior Court Jul- 27, 1903. Max L. Mitchell, P. S. Karshner Attorneys for Appellant.

16 *Præcipe for Certiorari.*

In the Superior Court of Pennsylvania, Sitting at Philadelphia.

No. 173.

N. L. REARICK, Appellant.

Certiorari to the Court of Quarter Sessions of the County of Northumberland, of May Sessions, 1902.

Issue Certiorari to the Court of Quarter Sessions of the County of Northumberland to bring up record and proceedings in a certain action in said Court, No. 173 May Sess. wherein The Commonwealth of Pennsylvania is Plaintiff and N. L. Rearick is Defendant.

Returnable to next Term, *Sec. Reg.*

To Lewis C. Greene, Prothonotary Superior Court, Sitting at Philadelphia

MAX L. MITCHELL,
P. S. KARSHNER,
Attorneys for Appellant.

Endorsement: 171 October Term 1903 Superior Court of Pennsylvania Sitting at Philadelphia. Commonwealth of Pennsylvania *v.* N. L. Rearick, Appellant Præcipe for Certiorari. Filed in the Superior Coury, Jul- 27, 1903 Max L. Mitchell, P. S. Karshner, Attorneys for Appellant.

17 *Petition for Allowance of an Appeal from the Superior Court of Pennsylvania to the Supreme Court of Pennsylvania.*

In the Supreme Court of Pennsylvania, Eastern District.

In the Superior Court of Pennsylvania, Oct. Term, 1903.

No. 171.

In the Court of Quarter Sessions of Northumberland County.

COMMONWEALTH OF PENNSYLVANIA, Appellee,

vs.

N. L. REARICK, Appellant.

Petition for Allowance of Appeal from Superior Court.

To the Honorable the Judges of the Supreme Court of Pennsylvania:

The petition of N. L. Rearick, the defendant below, and the appellant, by his attorney, P. S. Karshner and Max L. Mitchell respectfully represents:

That he appealed to the Superior Court from the judgment of the Court of Quarter Sessions of Northumberland county, affirming the judgment of a justice of the peace of said county, imposing, under the provisions of an ordinance of the borough of Sunbury, approved December 9, 1899, a fine of $25 and costs upon the petitioner; which judgment was affirmed by the Superior Court on Oct. 27, 1904.

The questions involved are:—

1. Whether an agent of a business house in one State, who
18 delivers merchandise, consigned to him for that purpose by his principal, to residents of another State who had previously ordered the same, is engaged in interstate commerce?

2. Whether an ordinance of the Borough of Sunbury violates Section 1 of the Fourteenth Amendment of the Constitution of the United States?

The questions involved as stated above were raised in the Superior Court by the appellee's assignments of error Nos. 1 to 6 inclusive, printed on pages 30 to 33 inclusive in his paper book.

(The opinion of the Superior Court in this case is on page 24 of this Record.)

The grounds upon which an appeal to the Supreme Court of Pennsylvania is asked are:

1. That the case involves the construction and application of Clause 3, Section 8, Article 1, of the Constitution of the United States, and that the said clause was wrongly construed and applied by the Superior Court.

2. That the case involves the construction and application of Clause 1 of the Fourteenth Amendment of the Constitution of the United States, and that said clause was wrongly construed and applied by the Superior Court.

19 3. That said case involves the construction and application of the last clause of Section 1, of the Fourteenth Amendment of the Constitution of the United States, and that said clause was wrongly construed and applied by the Superior Court.

Copies of the paper book in the Superior Court accompany this petition. By reference to these paper books the principles of justice which, with the greatest respect for the court below, the petitioner most humbly insists entitle him to the remedy of the appeal asked for, will more fully appear.

Wherefore the petitioner prays that he may be allowed an appeal to this court. And he will ever pray, etc.

N. L. REARICK,
By His Attorneys, P. S. KARSHNER AND
MAX L. MITCHELL.

Endorsement: No. —. Page 212 Commonwealth of Pennsylvania *v.* N. L. Rearick Appeal from Superior Court by N. L. Rearick. Petition for allowance of an appeal from the Superior Court of Pennsylvania to the Supreme Court of Pennsylvania Filed Nov. 25, 1904 In Supreme Court. *Appeal refused Per Curiam* Dec. 31, 1904. P. S. Karshner, Max L. Mitchell.

20 *Assignments of Error.*

In the Superior Court of Pennsylvania.

No. 171, October Term, 1903.

COMMONWEALTH OF PENNSYLVANIA, Appellee,
v.
N. L. REARICK, Appellant.

Appeal from the Court of Quarter Sessions of Northumberland County.

Assignments of Error.

The Court erred in refusing the defendant's first point, which point and the answer of the Court thereto are as follows:

"All of the acts of the defendant complained of as illegal in this case, and for which he was arrested under the provisions of the ordinance of the borough of Sunbury, approved December 9th, 1899, which ordinance is recited in the statement of facts agreed upon, were done in carrying on interstate commerce, and the arrest of the defendant is illegal and void because the ordinance above referred to, so far as it applies to the defendant, is in restraint of interstate commerce and is therefore a violation of Clause 3, Section 8 of Article 1, of the Constitution of the United States, which provides that "Congress shall have power * * * to regulate commerce with foreign nations and among the several states and with the Indian tribes." Answer: Refused.

21 2. The Court erred in refusing the defendant's second point, which point and the answer of the Court thereto are as follows:

"The arrest of the defendant is illegal and void because the ordinance of December 9, 1899, so far as the defendant is concerned, is in restraint of trade. It abridges the right, freedom and liberty of contract and for that reason violates Section 1 of the Fourteenth Amendment of the Constitution of the United States, which provides that 'No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.'" Answer: Refused.

3. The Court erred in refusing the defendant's third point which point and the answer of the Court thereto are as follows:

"The arrest of the defendant is illegal and void because, so far as the defendant is concerned, the ordinance of December 9, 1899, is unconstitutional in that it discriminates between persons and denies equal protection of the laws. It gives rights, privileges and immunities to some which it denies to others. It is in violation of the last clause of Section 1 of the Fourteenth Amendment of the Constitution of the United States, which provides that 'No state * * * shall deny to any person within its jurisdiction the equal protection of the laws.'" Answer: Refused.

22 4. The Court erred in that part of his opinion wherein he said: "Before delivery, therefore, they (the brooms) ceased to be subjects of interstate commerce and became mingled with the common mass of property of the state, and therefore subject to the laws and ordinances of the Commonwealth."

5. The Court erred in that part of his opinion wherein he said: "While they (the brooms) had in a certain manner been designated at Columbus as property to be delivered to the persons whose names were on the respective tags, and were delivered to the railroad company as a common carrier, yet they remained in the custody and control of the company, or their agent, the defendant. The title to the brooms did not pass to the person who had ordered them until delivered at his house, and they had been by him inspected and paid for. If the purchaser refused to accept any pay for his purchase the defendant's duty was to return the refused articles to his principal at Columbus. The place of sale, therefore, of these articles was the borough of Sunbury."

6. The Court erred in that part of his opinion wherein he said: "Being of the opinion that the defendant is guilty of a violation of the said ordinance in the sale of brooms as above described, the judgment of the Justice of the Peace imposing a fine of $25 and costs upon the said N. L. Rearick is affirmed."

P. S. KARSHNER,
MAX L. MITCHELL,
Att'ys for Appellant.

23 Endorsement: No. 171, October Term, 1903. In the Superior Court of Pennsylvania. Commonwealth of Pennsylvania *v.* N. L. Rearick. Assignments of Error. Filed in the Superior Court Oct. 28, 1903.

24 *Opinion.*

In the Superior Court of Pennsylvania.

No. 171, October Term, 1903.

COMMONWEALTH OF PENNSYLVANIA
v.
N. L. REARICK.

Appeal from the Court of Quarter Sessions of Northumberland County.

Filed Oct. 27, 1904.

Opinion by PORTER, *J.:*

The defendant was convicted under the provisions of an ordinance of the Borough of Sunbury requiring all "persons who sell at retail, by sample or otherwise, or solicit orders at retail, or deliver at retail, either on the streets or by traveling from house to house within the limits of the Borough of Sunbury any books, paintings, foreign or domestic goods, wares, merchandise or fruits, not of their own manufacture or production, without first obtaining from the chief burgess of the Borough of Sunbury, a license for such purpose;" and imposing a penalty for "selling, canvassing or delivering as aforesaid, without having first obtained and paid for a license." The authority of the borough to require persons canvassing from house to house and upon the streets, for the purpose of selling goods at retail,
25 or delivering goods in pursuance of orders obtained by such canvassing, to take out a license, and to impose a penalty for the violation of such an ordinance is within the police power delegated by the general borough law of April 13, 1851, P. L. 320; Borough of Warren *v.* Geer, 117 Pa. 207; North Wales Borough *v.* Brownback, 10 Pa. Superior Ct. 227; North Wales Borough *v.* Brownback, 194 Pa. 609; Mechanicsburg Borough *v.* Koons, 10 Pa. Superior Ct. 131. The specifications of error in this case do not raise any question of the delegation by the state to the borough of the authority to regulate by ordinance the business of itinerant dealers selling their wares upon the streets and by canvassing from house to house; nor do they involve any consideration of the sufficiency of the testimony to warrant a finding that the defendant had violated the provisions of the ordinance. The only questions raised in the court below, or upon this appeal, involve the rights of the defendant under the Constitution of the United States.

The appellant has, as required by the rules of this court, stated the questions involved in this proceeding to be: "1. Whether an

agent of a business house in one state, who delivers merchandise consigned to him for that purpose by his principal, to residents of another state, who had previously ordered the same, is engaged in interstate commerce?" and "2. Whether the ordinance of the Borough of Sunbury violates Section 1 of the Fourteenth Amendment of the Constitution of the United States." We have, therefore, to deal with only Federal questions.

26 The consideration of the first question necessarily involves an examination into the provisions of the contract and the manner of performance thereof, as agreed upon in writing by the parties in the court below. The Citizens' Wholesale Supply Company is a corporation organized under the laws of the state of Ohio, located and doing business as grocers in the city of Columbus in said state. The business includes the selling of groceries, sundries, and other articles for domestic purposes. In conducting said business the corporation employs agents who, under the directions of the company, solicit orders for groceries and articles of like character by exhibiting samples, in the state of Pennsylvania and other states of the Union by going personally to residents and citizens of said states, and when necessary from house to house in said states. Kunkle, a resident of the state of Pennsylvania, was employed by said company to solicit orders for groceries and other articles in the manner stated, and during the month of March 1902, went from house to house in the Borough of Sunbury, and solicited and took orders for groceries in the manner aforesaid, "being such goods as are usually sold by grocers." After he had taken a large number of orders for goods, said orders were forwarded to the company at Columbus, Ohio, whereupon said corporation filled said orders in the following manner: "If a particular person ordered twenty pounds of sugar, ten pounds of coffee, ten pounds of prunes and fifteen pounds of rice, the company put up in packages twenty pounds of sugar, ten pounds of coffee, ten pounds of prunes and fifteen

27 pounds of rice. These packages to fill this particular order were then placed in one or more boxes, the lids placed on the box or boxes and nailed fast. The name of the agent of the company who was to make the delivery of the packages at Sunbury and the name of the purchaser of the contents of each box was then stenciled on said box or boxes." N. L. Rearick was the agent of the company to receive the goods at Sunbury, and the goods to fill each particular order were placed in one or more boxes and closed as aforesaid, and marked "N. L. Rearick, Sunbury, Pa. For Mrs. Dan Daly," or whatever the name of the purchaser was. All goods were marked and packed in this manner with the exception of brooms. The orders for brooms were filled in the following manner: "If any man say John Smith, ordered one broom, which was included in his order for other goods, a broom was selected at the place of business of said company at Columbus, Ohio, to fill said order and a tag was marked in the following manner, and tied by a string to the handle of said broom: 'To N. L. Rearick, Sunbury, Pa. For John Smith, one broom; from the Citizens' Wholesale Supply Company, Columbus, Ohio.'" If any customer ordered more than one broom,

the figure before the word broom o.. the tag was changed accordingly and the tag was tied to a string which was wrapped around and tied to the handles of all the brooms ordered by that customer. "All brooms ordered by the several purchasers were selected to fill the order and packed in a similar manner to that above described.

28 The brooms were then aggregated together in bundles of a dozen each, or some such number, a paper wrapped around the straw part and around the paper and the bundles a twine was wound and tied to keep the bundles together. The brooms were tied in bundles solely for convenience in shipping. The brooms and boxes above described were then shipped from Columbus, Ohio, by said company, over the Pennsylvania Railroad, to its agent, N. L. Rearick, at Sunbury, Pa." The corporation kept no book accounts with the parties from whom orders had been taken by Kunkle, and extended no credit to such persons. The goods were sold for cash, to be paid for upon delivery at the residence of the several purchasers. All the goods shipped in pursuance of the orders were shipped to Rearick for delivery, and he was held responsible therefor, the goods were consigned to Rearick, and he alone had authority to obtain them from the railroad company. Rearick is a citizen of the United States and of the State of Pennsylvania, and is a general agent, on a fixed salary, of the Citizens' Wholesale Supply Company. He had under his charge the agents of said company, located in a certain portion of the state of Pennsylvania, including the Borough of Sunbury. It was his duty, among other things, to make delivery of goods, shipped by his principal, said company, into his district, to fill orders previously taken by other agents. Rearick went to Sunbury, on April 14, 1902, to deliver the goods, the orders for which had been taken by Kunkle; he received the car and with the assistance of Kunkle delivered the goods to the purchasers at their

29 residences in the following manner: "The boxes marked for persons living in a selected locality were taken from the car and placed in a wagon. Kunkle and Rearick then took the wagon with the goods to a selected locality and stopped at the houses of the respective purchasers. At the house of each purchaser they took from the wagon such boxes as were marked for such purchaser and delivered them to him and received from such purchaser payment therefor. This they did at the houses of all persons who had ordered goods." The money collected was by Rearick forwarded to his principals, at Columbus, Ohio. The above were the facts agreed upon with regard to delivery of the goods which had been packed in boxes, but the manner of delivering brooms was different, as to the latter the material facts agreed upon were as follows. On opening the car Rearick cut the twine that bound the brooms together in the bundles in which they had been shipped, and removed the paper in which the package had been wrapped. The brooms of which the package had been composed were separated, and one or more brooms, according to the order, delivered, each purchaser receiving the broom that had been marked for him, as hereinbefore described. No broom nor box was delivered to any one but the person who had ordered it and for whom it was marked.

While the agreement upon the facts was thus specific as to the manner in which the goods were delivered, the terms of the original contract for the sale were equally free from doubt. The sale was by sample; the goods were "such as are usually sold by grocers;" the delivery was to be at the residence of the purchaser in
30 Sunbury; and each purchaser had the right to examine the goods when delivered, and if the same were not equal to the sample shown by Kunkle at the time the order was taken could refuse to accept them. A copy of one of the orders which Kunkle had forwarded to his principals was attached to the agreement as to the facts, but the agreement does not state that these orders were signed by the proposed purchasers, and the only inference to be drawn from the facts agreed upon touching that point is that Kunkle had indorsed the name and address of the purchaser upon each order. The agreement as to the facts would not warrant a finding that the contract was that the goods should be shipped from Columbus by the Supply Company to the purchaser, and if such had been the contract it was not performed according to its terms. These were contracts, made in Pennsylvania, to deliver goods at the residences of the purchasers in Pennsylvania. The contracts of sale were, judged by their provisions only, executory contracts relating to commerce within the state of Pennsylvania, and were subject to the laws of this state. The appellant's principal could have fil-ed these contracts by tendering delivery of any goods of the kind and quality of the sample shown, obtained from sources within the state of Pennsylvania; whether the contemplated traffic should go outside the state or not was left to chance or extrinsic business considerations. The performance of the contracts was, therefore, not necessarily concerned with interstate commerce; Diamond Glue Company *v.* United States Glue Company, 187 U. S. 611. If the tran-
31 saction ever came within the protection of the interstate commerce clause of the Federal Constitution, it was not because of the inherent covenants of the contract, but from the manner in which those covenants were executed.

The mere fact that this applicant was a citizen of Pennsylvania, while those with whom he dealt were also residents of this state, is not in this case, material, nor is the fact that the principals of the appellant were citizens of Ohio of any weight in determining whether the transactions of the defendant involved only domestic commerce, to be controlled by the laws of Pennsylvania, or interstate commerce and within the protection of the powers of the national government. A citizen of Pennsylvania and a citizen of any other state are alike within the protection of the provisions of the Constitution of the United States in bringing goods into the state for purposes of sale, or in consequence of a sale, in making contracts with relation thereto and carrying such contracts into effect; Schollengerger *v.* Pennsylvania, 171 U. S. 1; Stockard *v.* Morgan, 185 U. S. 27. The rights of the defendant are to be determined from the covenants of the contract and what was done under them, and are in no wise dependent upon his place of residence or that of his principal.

That the power to regulate commerce between the states is ex-

clusively vested in Congress cannot be questioned. A state has no right to tax the people representing the owners of property
32 outside of the state, for the privilege of soliciting orders within it, as agents for such owners, for property to be shipped to persons within the state: Robbins *v.* Shelby Taxing District, 120 U. S. 489; Stockard *v.* Morgn, 185 U. S. 27; Brennan *v.* Titusville, 153 U. S. 289. Such a contract necessarily involves interstate commerce, the goods are without the state, the contract requires that they shall be consigned to the shipper, and delivered within the state. The purchaser could decline to accept performance in any other way. The agent who in good faith, on behalf of his principal, solicits and obtains such a contract for the importation of goods acts within the protection of the Constitution of the United States and there is a question whether he could be rendered liable to a local tax or license charge, although his principal, with the acquiescence of the purchaser, should subsequently depart from the terms of the contract and perform by delivering goods procured from some source within the state. Upon the other hand where the contract is one which may be performed by procuring goods from any source, if the vendor procures his supply from without the state and delivers the goods to the purchasers in the original package of importation, those making the deliveries are in position to invoke the protection of the interstate commerce clause of the Constitution of the United States.

The importer, whether he be a citizen of the state or not, may sell the goods in the original packages, free from state regulation:
33 Leisy *v.* Hardin, 135 U. S. 100; Lyng *v.* Michigan, 135 U. S. 161; Schollenberger *v.* Pennsylvania, 171 U. S. 1. The power of the state over the goods imported commences when the importer has so acted upon the importation that it has become incorporated and mixed with the mass of property in the state, which happens when the original package is no longer such in his hands: Brown *v.* Maryland, 12 Wheaton 419; Leisy *v.* Hardin, 135 U. S. 100. When the importer has so acted upon the thing imported that it has lost its distinctive character as an import, and he undertakes to distribute the contents of the package to a large number of distinct purchasers, or the performance of a number of independent executory contracts of sale, made prior to the importation with different parties, such delivery is no longer interstate, but has become domestic commerce and is subject to state control, so long as that control is exercised in a manner which does not involve discrimination, among dealers or the sources from which the goods come: May *v.* New Orleans, 178 U. S. 496; Austin *v.* Tennessee, 179 U. S. 343.

The appellant contends that the case of Caldwell *v.* North Carolina, 187 U. S. 622, decides that a delivery of goods in the manner adopted in this case is within the interstate commerce clause of the Constitution. We cannot assent to this proposition. In that case the defendant was delivering pictures and frames in North Carolina in pursuance of contracts previously made by other agents of his principal, the Chicago Portrait Company, a corporation of the
34 city of Chicago, Illinois. The opinion of Mr. Justice Shiras, speaking for the Court, clearly indicates that under the pro-

visions of the contract the Chicago corporation had undertaken to make and deliver the pictures and frames to the respective purchasers in Greensboro, North Carolina; the pictures and frames were made in Chicago, in pursuance of the several contracts, and were shipped to Greensboro, consigned to the Chicago Portrait Company; the defendant received from the carrier the various packages containing the pictures and frames, took them to a hotel in the city of Greensboro, opened the packages, placing each picture in the frame designed for it, and from this point delivered the pictures one at a time to the several purchasers. The defendant was convicted of violating a city ordinance requiring a license, the Supreme Court of North Carolina affirmed the judgment, and the Supreme Court of the United States reversed that decision. The contract in that case was for the making of specific articles, to be made in Illinois, and delivered to the purchaser in North Carolina: The party who contracts for a picture and a frame designed for it, or a piece of machinery of a peculiar design, to be made by a certain person or manufacturer in another state, contracts for the skill of that particular artist or maker, and the tender of an article of the same general character, originating from any other source would not be a compliance with the terms of the contract. If the contract is to be performed according to its terms the article must be made in one
35 state and sent into another. This necessarily involves interstate commerce. The pictures and frames were made in Chicago, presumably by the persons for whose skill the purchasers had contracted, and were delivered in Greensboro, North Carolina, in literal compliance with the contract. The question was whether the manner in which the delivery was made had taken the whole transaction out of the protection afforded by the Federal Constitution against local regulation of interstate commerce. Mr. Justice Shiras said, in speaking of the reasoning of the opinion of the Supreme Court of North Carolina: "It seems to proceed upon two propositions—first, that the pictures in question were not completed before they were brought to Greensboro; and, second, that the articles were not shipped directly to the purchasers, but to an agent of the sender in Greensboro." And in discussing those propositions said: "That the frames and the pictures were in separate packages, if such was the case, was merely for convenience in packing and handling, and placing the pictures in their proper places, (the language of the verdict) meant that each picture was placed in the frame designed for it. The selection of the frame was as much a part of the purchase and sale as the selection of the picture. Nor does the fact that the articles were not shipped separately and directly to each individual purchaser, but were sent to the agent of the vendor at Greensboro, who delivered them to the purchasers, deprive the transaction of its character as interstate commerce. It was only that the vendor used two instead of one agency in the delivery. It would
36 seem evident that, if the vendor had sent the articles by express company, which should collect on delivery, such a mode of delivery would not have subjected the transaction to such taxation. The same could be said if the vendor, or by a personal agent,

had carried and delivered the goods to the purchaser. That the articles were sent as freight by rail and were received at the railroad station by an agent who delivered them to the respective purchasers, in no wise changes the character of the commerce as interstate. Transactions between manufacturing companies in one state, through agents, with citizens of another constitute a large part of interstate commerce; and for us to hold with the court below, that the same articles, if sent by rail directly to the purchaser, are free from state taxation, but if sent to an agent to deliver, are taxable through a license tax upon the agent, would evidently take a considerable portion of such traffic out of the salutary protection of the interstate commerce clause of the Constitution." The points decided in that case were: (1) That in making deliveries, in performance of contracts necessarily involving interstate commerce, the vendor might make the delivery by himself, or by a personal agent, or through a carrier, or he might employ any or all of said agencies; and (2) That the shipment of the picture and the frame designed for it in separate packages did not involve an introduction of the goods into Greensboro in an incomplete condition. It does not appear in the report of that case that goods intended to be delivered to different purchasers were imported in the same package.
37 The several pictures and frames may have been in different packages, in which case each purchaser would receive the entire contents of two original packages. An importation of goods may be divided into any number of original packages and still be subject to national control, it is only when the contents of an original package is divided for the purpose of distribution that the goods become subject to local regulation. The removal of the outer covering, does not necessarily change the character of the importation as an original package, a specific object may retain its identity, although the box or bag which has protected it during transportation has been removed. The vital element is the retention of the identity of the contents of the package, as a unit of importation: Commonwealth *v.* Leslie, 20 Pa. Superior Ct. 529.

The contention of the appellant that in this case the original packages of importation were the single brooms with tags ties to them which composed the packages of one dozen into which the brooms were made up for the purpose of shipping them from the state of Ohio into Pennsylvania, cannot be sustained. The single brooms did not constitute the package in which the importation was actually made; nor was there any evidence that in *bona fide* transactions carried on between the manufacturer and the wholesale dealer residing in different states one broom ordinarily, or ever, was shipped or carried as a package for purpose of importation. There is no necessity for extended citation of authority as to what constitutes an
38 original package, *package,* the whole question was fully discussed in Austin *v.* Tennessee, 179 U. S. 343. The brooms with which the defendant dealt were not delivered in original packages. The other goods packed in boxes, under the facts agreed upon in this case were delivered in original packages; the defendant does not seem to have delivered a part of the contents of any box, and no

purchaser seems to have refused to accept any part of the goods which were so packed in boxes. We are of opinion that the facts agreed upon as to the delivery of the brooms rendered the transaction subject to state regulation.

The ordinance in question violates no right of the appellant guaranteed by the Fourteenth Amendment of the Constitution of the United States. That a state may by statute, and a municipality by ordinance, under authority duly delegated, enact and ordain reasonable regulations with regard to peddling and canvassing for the sale of goods from house to house has been long and definitely settled; Emert *v.* Missouri, 156 U. S. 296. A state has power to provide for the security of the lives, health and comfort of persons and the protection of property, and impose taxes upon persons residing within the state or belonging to its population, and upon vocations and employments pursued therein, not directly connected with foreign or interstate commerce, but in making such internal regulations, a state cannot discriminate adversely to the persons or property of other states, and such regulations must be equal and uniform; Powell *v.* Pennsylvania, 127 U. S. 678; Otis *v.* Parker, 187 U. S. 606; Austin *v.* Tennessee, 179 U. S. 343. The ordinance in question ap-
39 plies equally and uniformly to all persons, without regard to their places of residence, or any other qualification All who sell by canvassing and delivering from house to house, articles, "not of their own production or manufacture" are required to procure a license. Manufacturers and producers are only excepted so long as their sales are confined to the articles produced by them. When such persons attempt to sell articles produced by others they must, under the provisions of their ordinance, procure a license. The ordinance, therefore, requires all dealers, those who buy to sell again, to take out a license. Those who make to sell, and sell only what they make, are not dealers and are not subject to the provisions of this ordinance. This is the classification upon which the whole mercantile tax system of Pennsylvania it today founded; and such classification has by the Supreme Court of the United States been held not to offend against the provisions of the Fourteenth Amendment: American Sugar Refining Company *v.* Louisiana, 179 U. S. 89. The power of a state to classify for purposes of taxation, has been clearly recognized, and the government of the United States had consistently pursued the same policy. The classification adopted in this ordinance exempts producers from the taxation of the methods employed by them to put their products upon the market, which is precisely what was done under the Louisiana statute, passed upon in the case just cited. The classification attempted in the Illinois statute, which
40 was by the Supreme Court of the United States, in Conolly *v.* Union Sewer Pipe Company, 184 U. S. 540, held to be unconstitutional, did not dissolve an exercise of the taxing power but it attempted a classification which had no relation to the subject matter of the statute and no connection with the reason for nor subject matter of the legislature.

The judgment is affirmed.

Henderson, J. dissents.

41 *Certiorari.*

The Superior Court of Pennsylvania, Sitting at Philadelphia, *ss:*

[SEAL.] The Commonwealth of Pennsylvania to the Justices of the Court of Quarter Sessions for the County of Northumberland, Greeting:

We being will- for certain causes, to be certified of the matter of the Appeal of N. L. Rearick from the Judgment in No. 173 May Sessions 1902 wherein the Commonwealth of Pennsylvania was plaintiff and the said appellant was defendant, before you, or some of you, depending, Do Command You, that the record and proceedings aforesaid, with all things touching the same, before the Justices of our Superior Court of Pennsylvania, at a Superior Court to be holden at Philadelphia, the Fourth Monday of October next, so full and entire as in our Court before you they remain, you certify and send, together with this Writ, that we may further cause to be done thereupon that which of right and according to the laws of the said State ought.

Witness the Honorable Charles E. Rice, Doctor of Laws, President Judge of our said Superior Court at Philadelphia, the twenty-seventh day of July in the year of our Lord one thousand nine hundred and three.

LEWIS C. GREENE,
Prothonotary.

42 (On the back of the paper.)

I certify that Max L. Mitzhell is surety in the within case, in the sum of two hundred $200 Dollars.

J. A. McCARTHY,
Prothonotary.

To the Honorable the Judges of the Superior Court of the Commonwealth of Pennsylvania, sitting at Philadelphia:

The record and process, and all things touching the same, so full and entire as before us they remain, we certify and send, as within we are commanded.

VORIS AUTEN, [SEAL.]
A. L. J.

Endorsement: 173 May Sess. 1902 Q. S. Northumberland No. 171 October Term 1903 Superior Court Commonwealth of Pennsylvania *v.* N. L. Rearick Appellant Certiorari to the Court of Quarter Sessions for the County of Northumberland Returnable the Fourth Monday of October 1903. Rule on the Appellee, to appear and plead on the Return-day of the Writ. Filed Jul. 28, 1903 James A. McCarthy, Clerk Filed in the Superior Court Oct. 24, 1903. Max L. Mitchell P. S. Karshner.

43 *Remittitur.*

In the Superior Court of Pennsylvania.

[SEAL.] The Commonwealth of Pennsylvania, to the Justices of the Court of Quarter Sessions for the County of Northumberland, Greeting:

Whereas, By virtue of our Writ of Certiorari from our Superior Court of Pennsylvania, Sitting at Philadelphia, returnable in the same Court on the Fourth Monday of October in the year of our Lord one thousand nine hundred and three a Record was brought into the same Court, upon appeal by N. L. Rearick from your Judgment made in the matter of No. 173 May Session wherein the Commonwealth of Pennsylvania was plaintiff and the said appellant was defendant. And it was so proceeded in our said Superior Court, that the following Judgment was made, to wit: The Judgment is affirmed. And the record and proceedings thereupon, and all things concerning the same, were (agreeably to the directions of the Act of Assembly in such cases made and provided) ordered by the said Superior Court to be remitted to the Court of Quarter Sessions for the County of Northumberland aforesaid as well for execution or otherwise as to justice shall appertain: Whereupon we here remit you the Record of the Judgment aforesaid and the proceedings thereupon, in order for execution or otherwise, as aforesaid.

Witness, the Honorable Charles E. Rice, Doctor of Laws President Judge of our said Superior Court, at Philadelphia, the 2nd
44 day of November in the year of our Lord one thousand nine hundred and four.

LEWIS C. GREENE,
Pro Prothonotary.

Endorsement: 173 May Session 1902 Q. S. Northumberland Co. No. 171 October Term 1903. Superior Court. Commonwealth of Pennsylvania *v.* N. L. Rearick Appellant Remittitur Atty. 3.00 Filed No. 3, 1904 James A. McCarthy, Prothonotary.

45 *Record of Court of Quarter Sessions.*

STATE OF PENNSYLVANIA, *County of Northumberland, ss:*

Among the Records and proceedings enrolled in the Court of Quarter Sessions of the Peace in and for the County of
[SEAL.] Northumberland in the Commonwealth of Pennsylvania to No. 173 May Sessions 1902, is contained the following:

Copy of Session Docket Entry.

173.

In Re Petition of N. L. Rearick for Right to Appeal from Summary Conviction.

Walter Shipman.

June 30, 1902 Petition of N. L. Rearick praying the Court for the reasons set forth therein, to grant him the right to appeal from the summary conviction, before J. P. Carpenter, Justice of Peace aforesaid presented. And now, June 30, 1902, the foregoing petition read, and after due consideration an appeal is granted to the petitioner as prayer for in the petition. The bail to be fixed for such appeal to be within the discretion of the Justice before whom the summary conviction was had. By the Court. Voris Auten, A. L. J. July 1, 1902, Transcript from Docket of J. P. Carpenter, J. P. and Recognizance in sum of Three Hundred Dollars, with Walter Shipman as surety, filed. Jan. 26, 1903 continued P. C. Feb. 23, 1903 Continued P. C. Mar. 9, 1903 Agreed statement of facts filed. Same day defendant's conclusion of law filed. March 23, 1903
46 Argued and C. A. V. July 9, 1903 Opinion of Court and answer to the defendant's request for conclusions of law, filed. "The judgment of the Justice of the Peace, imposing a fine of $25.00 and costs upon N. L. Rearick, is affirmed." Voris Auten, A. L. J. (seal). Same day an exception is noted and bill sealed for the defendant. Voris Auten, A. L. J. (seal). July 27, 1903 defendant appeals to the Superior Court of Pennsylvania, and makes affidavit that appeal is not for delay &c. and files bond in the sum of $200 with Max L. Mitchell as surety. July 28, 1903 Certiorari from the Superior Court of Pennsylvania sitting at Philadelphia received and filed. Aug. 4, 1903 Record certified.

Petition of N. L. Rearick for Right to Appeal from Summary Conviction.

Order and Decree.

In the Court of Quarter Sessions of the Peace of Northumberland County.

To the Honorable the Judges of said Court:

The petition of N. L. Rearick of the City of Harrisburg, in the County of Dauphin and State of Pennsylvania, respectfully represents:

47 That on the fourteenth day of April 1902, D. A. Breninghaus made an information before J. P. Carpenter, one of the Justices of the Peace in and for the County of Northumberland, charging your petitioner with a violation of an ordinance passed by the Borough of Sunbury on the ninth day of December, 1899, en-

titled "An Ordinance to provide for the licensing of canvassers &c.," a copy of which information is hereto attached and made a part hereof.

Your petitioner further represents that he has also attached a copy of said ordinance to this petition which is also to be taken as part of the same.

Your petitioner further showeth that in pursuance of said information a warrant was duly issued for his arrest, and that he was apprehended on the seventeenth day of June, 1902, and taken before the said J. P. Carpenter, Justice of the Peace, where he entered into a recognizance in the sum of Two Hundred Dollars, with Walter Shipman as surety, conditioned for his appearance for hearing before said Justice, in said case, at two o'clock P. M., on June 27, 1902. That at the time fixed for said hearing he appeared before said Justice, and the case was heard, and after the hearing of the evidence your petitioner was summarily convicted of a violation of said ordinance and sentenced to pay a fine of Twenty-five dollars and costs of prosecution.

Your petitioner further represents that he was acting for the Citizens' Wholesale Supply Company of Columbus, in the State
48 of Ohio, and that the crime with which he was charged consisted of the taking of orders in the Borough of Sunbury, of divers persons, for groceries, spices, brooms, &c., which orders were filed by the Company aforesaid, at Columbus, Ohio, and shipped to Sunbury, Penna., for the persons from whom orders were taken, each customer's goods being shipped in an original package, duly labeled with the customer's name.

Your petitioner is informed and verily believes that the business as conducted by him is within the provisions of the Inter-state Commerce Law, and that the ordinance under which he was convicted is discriminating, and therefore unconstitutional, and that under such circumstances he is protected by the laws relating to Inter-state commerce, and that his conviction, sentence and fine, under the ordinance aforesaid, is in violation of law, and therefore unjust, being a violation of his constitutional rights.

Your petitioner therefore prays your Honorable Court to grant him the right of appeal from the summary conviction aforesaid, and he will ever pray, &c.

N. L. REARICK.

STATE OF PENNSYLVANIA, *County of Northumberland, ss:*

Before me, the subscriber, one of the Justices of the Peace in and for the County aforesaid, personally came N. L. Rearick, the
49 above named petitioner, who being duly sworn according to law deposes and says that the facts set forth in the foregoing petition are true and correct; that the appeal asked for is not for the purpose of delay, but because he verily believes that injustice has been done him.

N. L. REARICK.

Sworn and subscribed to before me this 28th day of June, A. D. 1902.

[SEAL.] WALTER SHIPMAN,
Justice of the Peace.

Decree of Court.

And now, June 30, 1902, the foregoing petition read, and after due consideration an appeal is granted to the petitioner as prayed for in the petition. The bail to be fixed for such appeal to be within the discretion of the justice before whom the summary conviction was had.

By the Court:

VORIS AUTEN, *A. L. J.*

COMMONWEALTH OF PENNSYLVANIA,
County of Northumberland, Borough of Sunbury, ss:

Before me, the subscriber, one of the Justices of the Peace in and for said County, personally came D. A. Breninghaus, who
50 being duly sworn according to law doth depose and say that N. L. Rearick on the 14th day of April, 1902, within the Borough of Sunbury, in Northumberland County, Penna., sold at retail, by sample or otherwise, or solicited orders at retail, and solicited orders for, sold and delivered at retail, upon the streets and by traveling from house to house, foreign or domestic goods, wares and merchandise, not of his own production or manufacture, without first having obtained from the Chief Burgess of Sunbury Borough a license for such purpose, contrary to the ordinance of said Borough of Sunbury entitled "An Ordinance to provide for the licensing of canvassers &c." approved Dec. 9, 1899, and further saith not.

(Signed) D. A. BRENINGHAUS.

Sworn and subscribed before me this 14th day of April, 1902.

(Signed) J. P. CARPENTER.

An Ordinance to provide for the licensing of canvassers and all other persons who sell at retail by sample or otherwise, or who solicit orders at retail, or who solicit orders for, sell or deliver at retail, either on the streets or by traveling from house to house within the limits of the Borough of Sunbury, any books, paintings, foreign or
51 domestic goods, wares, merchandise, or fruits, not of their own production or manufacture, and imposing a penalty for a violation of this ordinance.

SECTION 1. Be it enacted and ordained by the Borough of Sunbury, in town council assembled, and it is hereby enacted and ordained by the authority of the same, That after the passage of this ordinance it shall be unlawful for any person or persons to sell at retail, by sample or otherwise, or to solicit orders at retail, or to solicit orders for, sell or deliver at retail, either on the streets or by traveling from house to house within the limits of the borough of Sunbury,

any books, paintings, foreign or domestic goods, wares, merchandise or fruits not of their own production or manufacture without having first obtained from the chief burgess of the borough of Sunbury a license for such purpose.

SECTION 2. The license fee required to be paid under the provisions of this ordinance shall be as follows: For one day two dollars; for one week ten dollars; for one month twenty dollars; for three months fifty dollars; for six months one hundred dollars; for one year one hundred and fifty dollars.

SECTION 3. Any person or persons violating this ordinance by selling, canvassing, soliciting or delivering as aforesaid, without having first obtained and paid for a license as required in sections one and two of this ordinance, shall, upon conviction thereof before any magistrate or justice of the peace residing in the said borough,
52 forfeit and pay a fine not exceeding fifty dollars and not less than twenty-five dollars for the use of the Borough aforesaid for each and every offense, together with costs of prosecution; the costs of the magistrate, justice of the peace and constable to be the same as the costs fixed by law for them in similar cases. And any person or persons so convicted and fined, in default of payment thereof, together with the costs aforesaid, shall forthwith be confined in the common jail for the County of Northumberland for a period of not less than fifteen nor more than ninety days, or until such time as the costs and fine imposed, together with the prison charges accrued, be fully paid and satisfied.

SECTION 4. The word "retail," as used in this ordinance, shall be construed to mean in small quantities, such as are usually immediately called for by customers.

SECTION 5. All ordinances or parts of ordinances inconsistent herewith be and the same are hereby repealed.

Approved December 9, 1899.

P. H. MOORE,
Chief Burgess.

Endorsement: No. 173 May Sess. 1902 Petition of N. L. Rearick for right to appeal from summary conviction. Order and Dreree within. Filed June 30, 1902 James A. McCarthy, Clerk Walter Shipman Attorney at Law, Sunbury, Pa.

53 *Recognizance of Bail.*

Transcript of Docket of J. P. Carpenter, J. P.

No. 467.

COMMONWEALTH OF PENNSYLVANIA, *Borough of Sunbury:*

Warrant issued April 14, 1902, to J. O. Sterner, Constable, on oath of D. A. Breninghouse, charging that N. L. Rearick, on the 14th day of April, 1902, within the Borough of Sunbury, County of

Northumberland, Pa., sold at retail by sample or otherwise, or solicited orders at retail, and solicited orders for, sold and delivered at retail, upon the streets and by traveling from house to house, foreign or domestic goods, wares and merchandise, not of his own production or manufacture without having first obtained from the Chief Burgess of the Borough of Sunbury a license for such purpose, contrary to an ordinance of said Borough of Sunbury, entitled "An ordinance to provide for the licensing of canvassers, &c. approved Dec. 9, 1899. On June 17, 1902, Defendant brought up Commitment issued for the Defendant. Afterward, Defendant and Walter Shipman each held in the sum of $200 for Defendant's appearance at hearing, June 27, 1902, at 2 o'clock P. M. Subpœna issued for Borough. At proper time, Defendant comes in. John Kunkle, D. A. Breninghouse, C. G. Davis, Minnie Hopple, and William Baylor, sworn for borough. N. L. Rearick sworn for Defendant. Continued to June 28, 1902, at 9 o'clock A. M. From the evidence, and it is so admitted, it appears that the Defendant received goods at Sunbury, Pa., invoiced
54 to himself from the Citizens' Wholesale Supply Company, of Columbus, Ohio, for whom the Defendant is the agent, on or about the 14th day of April, 1902, and at various other times within two years last past. Prior to this time, orders had been taken at retail from various persons in the Borough of Sunbury, for whom the goods so invoiced *was* intended and to whom *it was* delivered. All the goods, though being invoiced and addressed to and received by, the Defendant, had tags placed upon them by the said Citizens' Wholesale Supply Company, of Columbus, Ohio, indicating the persons to whom the said goods should be delivered, and all orders were in separate packages, excepting a number of brooms which were tied up in bundles of one dozen each, which bundles were invoiced to Defendant. As to whether the separate brooms within the bundles were all marked with the names to whom they were to be delivered, the evidence is conflicting. Two witnesses for the Borough swear they were not, and the Defendant swears they were, so marked. Upon this point, the weight of the testimony is with the Borough. It also appears from Defendant's own testimony that the customers had the privilege of examining the goods upon delivery, and thereupon to either accept or reject the same. Whereupon, if rejected, the goods would remain in the custody of, and continue the property of, the Defendant as Agent. The Justice is of the opinion that under the evidence and the law, the Defendant is guilty of violating said ordinance by retailing goods, wares, merchandise, &c., not of their own manufacture, from house to house in the Borough of
55 Sunbury, as charged.

June 28, 1902, Defendant is sentenced to pay a fine of $25 and costs of prosecution, and in default of the payment thereof, stand committed to the county jail for a period of thirty days. Defendant, same day, takes an appeal, and Defendant and Walter Shipman, of Sunbury, Pa., each held in the sum of three hundred dollars for defendant's appearance at the Court of Quarter Sessions of the Peace to be holden in and for Northumberland County at

Sunbury, Pa., the 22nd day of September 1902, and not depart without leave. Costs $17.86 paid by defendant.

I, J. P. Carpenter, hereby certify that the above is a true and correct transcript of the proceedings had before me in the above stated case, so far as the same remains of record upon my docket.

Witness my hand and official seal, July 1, 1902.

[SEAL.] J. P. CARPENTER, *J. P.*

Complaint on Oath of D. A. Breninghouse, before J. P. Carpenter, J. P.

COMMONWEALTH OF PENNSYLVANIA
v.
N. L. REARICK.

BOROUGH OF SUNBURY, *Northumberland County, ss:*

We, N. L. Rearick, and Walter Shipman, of Sunbury, Pa. do acknowledge ourselves to be indebted to the Commonwealth of Pennsylvania, in the sum of Three Hundred Dollars, lawful
56 money of the United States, to be levied of our goods and chattels, lands and tenements, to the use of the Borough of Sunbury, to which payment well and truly to be made to the said Commonwealth of Pennsylvania, we and each of us do bind ourselves, our heirs, executors and administrators, and every of them jointly and severally, firmly by these presents.

Sealed with our seals and dated at Sunbury, Pa., this 28th day of June, A. D. one thousand nine hundred and two (1902)

Now the condition of this obligation is such: That if N. L. Rearick who has been charged with the violation of an ordinance of the Borough of Sunbury, entitled "An ordinance to provide for the licensing of canvassers, &c.," approved Dec. 9, 1899," shall be and appear at the next Court of Quarter Sessions of the Peace to be holden at Sunbury, for the County of Northumberland, on the 22nd day of September, A. D. 1902, then and there to answer any charge or charges that may have been then and there alleged against him and not depart Court without leave, then this obligation to be void, otherwise to be and remain in full force and virtue.

N. L. REARICK. [SEAL.]
WALTER SHIPMAN. [SEAL.]

Taken and acknowledged before me this 28th day of June, A. D. 1902.

[SEAL.] J. P. CARPENTER, *J. P.*

57 COMMONWEALTH OF PENNSYLVANIA,
Northumberland County, ss:

Walter Shipman, being duly sworn says that he resides in Sunbury, Pa., and that he is worth the sum of Three Hundred Dollars, over and above all his just debts and liabilities.

WALTER SHIPMAN.

Sworn and subscribed before me this 28th day of June, A. D 1902.

[SEAL.] J. P. CARPENTER, *J. P.*

NOTE.—If more than one bail write additional affidavit.

Endorsement: No. 173 May Sess. 1902 Borough of Sunbury Commonwealth of Pennsylvania *v.* N. L. Rearick, Recognizance o Bail Filed Jul. 1, 1902 James A. McCarthy, Clark.

Agreed Statement of Facts.

Filed Mar. 9, 1903 James A. McCarthy, Prothonotary

In the Court of Quarter Sessions of Northumberland County.

COMMONWEALTH
v.
N. L. REARICK.

58 Agreed Statement of Facts

It is hereby agreed by and between Counsel for the defendant an counsel for the Plaintiff that the following is a true statement of th facts in this case and that the case be heard thereon.

1. The Citizens' Wholesale Supply Co. is a corporation duly o ganized and existing under the laws of the State of Ohio, located an doing business as grocers in the City of Columbus, in said Stat The business includes the selling of groceries, sundries and oth articles for domestic purposes.

In conducting said business The Citizens' Wholesale Supply C employs agents who, under the direction of said Company, solic orders for groceries, and articles of like character to those abo named by exhibiting samples, in the State of Pennsylvania, an other States of the Union by going personally to residents and cit zens of said States and when necessary from house to house in sa States.

2. J. S. Kunkle, a resident of the State of Pennsylvania, was em ployed by said company to solicit orders for groceries and oth articles in the manner stated.

During the month of March and the early part of April 1902 i pursuance of his employment Kunkle went from house to house i the Borough of Sunbury in said State of Pennsylvania and solicit and took orders for groceries in the manner aforesaid, being suc goods as are usually sold by grocers. After he (said Kunkl
59 had taken a large number of orders for goods said orders we forwarded to the company at Columbus, Ohio, whereupo said Company filled said orders at its place of business in Columbu Ohio, by putting up in packages the proper quantity of each artic ordered to fill said order; for instance, if a particular person order

20 pounds of sugar, 10 pounds of coffee, 10 pounds of prunes, 15 pounds of rice, the company put up in packages 20 pounds of sugar, 10 pounds of coffee, 10 pound- of prunes and 15 pounds of rice. These packages, to fill this particular order, were then placed in one or more boxes, the lids placed on the box or boxes and nailed fast. The name of the agent of the company who was to make the delivery of the packages at Sunbury, and the name of the purchaser of the contents of each box was then stenciled on said box or boxes. For instance, N. L. Rearick was the agent of the company to receive the goods at Sunbury and make the delivery to the purchasers while Mrs. Dan Dailey was a purchaser. In such case the goods ordered by Mrs. Dan Dailey would be placed in one or more boxes, said boxes closed as aforesaid and marked as follows:

N. L. Rearick, Sunbury, Pa.

For Mrs. Dan Dailey. "7"

The "7" at the lower right hand corner is intended to indicate to the agent the number of Mrs. Dan Dailey's order and was placed there for the purpose of preventing mistakes and facilitating delivery. If Mrs. Dan Dailey's goods were packed in more than
60 one box each would be marked as above shown. All other boxes for other purchasers were similarly marked. All goods were packed and marked in the manner just described with the exception of brooms. The orders for brooms were filled in the following manner: for instance, if one man, say John Smith, ordered one broom which was included in his order for other goods, a broom was selected at the place of business of said Company in Columbus, Ohio, to fill said order and a tag was marked in the following manner and tied by a string to the handle of said broom:

To N. L. Rearick, Sunbury, Pa.

For John Smith, 1 broom 4

From the Citizens Wholesale Supply Co. 366 to 376 Mt. Vernon Av., 290 to 310 N. Grant Av., Columbus, Ohio.

If John Smith or any other customer ordered more than one broom the "1" before the word broom on the tag was changed to the number ordered and the tag tied to a string which was wrapped around and tied to the handles of all the brooms ordered by that customer. All brooms ordered by the several purchasers were selected to fill the order and tagged in a similar manner to that just described. The brooms were then aggregated together in bundles of a dozen each, or some such number, a paper wrapped around the straw part, and around the paper and the bundles a twine was wound and tied to keep the bundle together. The brooms were tied in bundles solely

for convenience in shipment. The brooms and the boxes
61 above described were then shipped from Columbus, Ohio by said Company, over the Pennsylvania Railroad to its agents, N. L. Rearick at Sunbury, Pa.

The said Company kept no book accounts with the several persons from whom orders were taken other than those kept upon the sheets hereto attached, copies of which are made in a letter press copying book of the company, and extended no credit to such persons from whom orders were taken, the goods being sold for cash to be paid for upon delivery at the residences of the several purchasers. All goods shipped in pursuance of said orders were shipped to N. L. Rearick for delivery and he was held responsible therefor. These goods were consigned to N. L. Rearick and he alone had authority to obtain the same from the Railroad Company, the common carrier. The original orders referred to in the beginning of this paragraph, an original one of which is attached to this statement of facts, were forwarded by the parties taking the orders to the Company at Columbus, Ohio, and after the orders had been filled, re-forwarded by them, to N. L. Rearick in this case, at Sunbury, Pa., and after delivery had been made by N. L. Rearick these orders and order sheets were returned by him to the Company where they were kept on file for future reference, in connection with other data on the same subject.

3. N. L. Rearick is a citizen of the United States and of the State of Pennsylvania, and is a general agent on a fixed salary of
62 the said The Citizens' Wholesale Supply Co. He has under his charge the agents of said company located in a certain portion of the State of Pennsylvania. The Borough of Sunbury is in his district. It is his duty, among other things, to make delivery of the goods shipped by his principal said company, into his district to fill orders previousy taken by other agents In discharge of his duty he went to the Borough of Sunbury, Pa., to make delivery on the 14th day of April 1902, of the goods to fill the orders taken by J. S. Kunkle as above described. At Sunbury he received the car of goods from Columbus, Ohio. The defendant opened the car and with the assistance of the said J. S. Kunkle delivered the goods to the purchasers at their residences in the following manner:

The boxes marked for persons living in a selected locality were taken from the car and placed in a wagon. J. S. Kunkle, in company with N. L. Rearick then took the wagon with the goods to a selected locality and stopped at the houses of the respective purchasers. At the house of each purchaser said Kunkle took from the wagon such boxes as were marked for such purchaser and delivered them to him and received from said purchaser payment therefor. This he did at the houses of all persons who had ordered goods from him as aforesaid. The money collected by Kunkle was turned over by him to the defendant, N. L. Rearick, who, after completion of the delivery, sent the money to his principals said Company at Columbus, Ohio.

4. On opening the car to make said delivery the defendant, N. L. Rearick, cut the twine that bound the brooms together in
63 bundles and unwrapped the paper from the same. The brooms were then delivered in the same manner and at the

same time as the boxes, each purchaser receiving the broom that had been marked for him and appropriated to his order in Columbus, Ohio, as above described.

5. No broom nor box was delivered to any one but the person who had ordered it and for whom it was marked.

6. The orders taken by said Kunkle had endorsed upon them respectively the name and address of the purchaser. The orders were numbered in the order in which they were taken. A copy of the order was left with each purchaser. Under the contract each purchaser had the right to examine the goods when delivered and if the same was not equal to the samples shown by Kunkle at the time the order was taken could refuse to accept them. Said Kunkle took orders for goods, an original one of which orders is hereto attached, made part hereof and marked Exhibit "D." Said orders show that they were given to the Citizens' Wholesale Supply Co. of Columbus Ohio.

No goods were shipped to N. L. Rearick at Sunbury, Pa. by said Company from Columbus, Ohio, except to fill the orders taken by Kunkle, as aforesaid. And no goods were shipped in any other manner than as above described nor from any other place than Columbus, Ohio. And all boxes and brooms were marked as above described.

No box was opened by said defendant or any one for him
64 after its arrival within the State of Pennsylvania before the same was delivered to the purchaser, unless for the purpose of inspection only by the purchaser as provided in the contract of purchase, to see if the goods were equal to the sample shown by Kunkle when he took the order.

7. N. L. Rearick, the defendant, was the agent of said Company *inter alia* for the purpose of receiving these goods at the railroad station and delivering them to the several parties who had previously ordered them, and receive the money therefore. He was held responsible to the company for all goods so entrusted to his custody and it was his duty to receive payment and send the money to the Company. If for any reason any goods were not delivered it was his duty to return the same to the company at Columbus, Ohio.

8. Rearick, the defendant, was engaged in delivering goods in the manner aforesaid in the Borough of Sunbury, Pa. on the 14th day of April 1902.

9. The Borough of Sunbury is a municipal corporation of the State of Pennsylvania, organized under a special Act of the General Assembly of the State of Pennsylvania, approved March 24, 1797, and the several supplements thereto, and has in force an ordinance approved December 9, 1899, a true and correct copy of which is hereto annexed and made a part hereof, and marked Exhibit A. The said Rearick is charged with violating Section I of the said Ordinance.

65 10. At and prior to the time of his arrest the said Rearick had not been selling or offering for sale any goods, wares or merchandise in any other place or manner than has hereinbefore been specified and he has not been guilty of any violation of said

ordinance unless the facts as hereinbefore stated constitutes a violation. In making such deliveries he did not offer nor deliver any goods except those ordered, nor to any other person or persons than those who had ordered goods as aforesaid and to them he delivered only the goods ordered. The goods were in Sunbury for delivery to the purchasers in pursuance of their orders taken by said Kunkle in March and the early part of April previously. The goods were there for no other purpose than as aforesaid.

11. Rearick, the defendant, at the time he delivered the goods as aforesaid and at the time of his arrest was not delivering goods at wholesale, that is, to dealers, nor was he delivering goods of his own production or manufacture or the production or manufacture of his principal, said company, and he did not have license of any kind permitting him to deliver goods by retail or otherwise in said Borough of Sunbury.

12. On the 14th of April, 1902, the defendant, while engaged in delivering goods as above described, was arrested and carried before one J. P. Carpenter a Justice of the Peace in and for Northumberland County in the State of Pennsylvania. The said arrest was made by virtue of a warrant issued under an information which
66 charged the defendant with a violation of the ordinance of said Borough above described, and a copy of which is attached hereto and made part hereof and marked Exhibit A. That on the 28th day of June 1902 a trial before said Justice of the Peace was had of said charge and said Justice of the Peace rendered his decision on the 29th day of June 1902 and sentenced the defendant to pay a fine of $25 and costs or to stand committed to the Jail of the County of Northumberland, which is the Jail at Sunbury, for a period of thirty days and until said fin*d* and costs were paid. That the defendant refused to pay said fine and costs and from said decision appealed to the Court of Quarter Sessions in and for the County of Northumberland aforesaid and entered bail for his appearance at such Court of Quarter Sessions.

13. If the Court should be of the opinion upon the facts stated that the defendant Rearick was guilty of a violation of said Ordinance of December 9, 1899, then the judgment of the Justice of the Peace imposing a fine of $25 upon the defendant, is to be affirmed. If the Court should be of the opinion that Rearick has not violated the provisions of said Ordinance or that said Ordinance is, so far as he is concerned, illegal or unconstitutional then judgment of "Not guilty" is to be rendered in favor of the defendant. In either case each party reserves the right to sue out a writ of error or take other appeal from said judgment.

HARRY S. KNIGHT, *For Com'th.*
MAX L. MITCHELL,
Counsel for Def't.

67 *Request for Findings of Conclusions of Law.*

In the Court of Quarter Sessions of Northumberland County.

No. —.

COMMONWEALTH
v.
N. L. REARICK.

Counsel for Defendant respectfully ask the Court to find the following conclusions of law:

1. All of the acts of the defendant complained of as illegal in this case and for which he was arrested under the provisions of the ordinance of the Borough of Sunbury approved December 9, 1899, which ordinance is recited in the statement of facts agreed upon, were done in carrying on interstate commerce, and the arrest of the defendant is illegal and void because the ordinance above referred to, so far as it applies to the defendant, is in restraint of interstate commerce and is therefore a violation of Clause 3, section 8 of Article I of the Constitution of the United States which provides that "Congress shall have power * * * to regulate commerce with foreign nations and among the different States and with the Indian tribes."

Refused. *Per Cur.*

2. The arrest of the defendant is illegal and void because the ordinance of December 9, 1899, so far as the defendant is concerned, is in restraint of trade. It abridges the right, freedom and liberty of contract and for that reason violates Section I of the

68 Fourteenth Amendment of the Constitution of the United States which provides "No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

Refused. *Per Cur.*

3. The arrest of the defendant is illegal and void because so far as the defendant is concerned, the ordinance of December 9, 1899 is unconstitutional in that it discriminates between persons and denies the equal protection of the laws. It gives rights, privileges and immunities to some which it denies to others. It is in violation of the last clause of Section I of the Fourteenth Amendment to the Constitution of the United States which provides that "No State * * * shall deny to any person within its jurisdiction the equal protection of the laws."

Refused. *Per Cur.*

Endorsement: Filed Mar. 9, 1903 J. A. McCarthy, Clerk.

69 *Opinion of Court of Quarter Sessions.*

In the Court of Quarter Sessions of Northumberland County, 1903.

No. —.

COMMONWEALTH
vs.
N. L. REARICK.

Opinion.

By the COURT:—This case reaches us on an appeal from the judgment of the Justice of the Peace, before whom the defendant was summarly convicted, for violation of an ordinance of the borough of Sunbury, this county. The facts have been agreed upon by counsel for the respective parties and we are, therefore, necessarily limited in our consideration to the data thus furnished.

The Citizens Wholesale Supply Company is an Ohio corporation, having its place of business in the city of Columbus, that State. Its business includes the sale of groceries, sundries and other articles for domestic purposes. In the conduct of its business it employs agents who, under the direction of the Company, solicit orders for groceries and other articles, by going personally to residents and exhibiting samples of their wares and soliciting orders for the sale of the same. J. S. Kunkel, a resident of this State, acted as such agent for the company, and in March and April, 1902, went from house to house in the borough of Sunbury and solicited and took orders for groceries, brooms, etc. The orders thus taken were forwarded to the Company, where the said Company filled these orders by putting in packages the proper quantity of each article ordered. All of the articles ordered by any one person, except brooms, were placed in one or more boxes, the lids of which were nailed fast. The articles intended for one person were in no instance placed in
70 a box containing articles for another. The name of the agent of the Company, who was to make the delivery of the package at Sunbury and the name of the purchaser of the contents of each box, was stencilled on the box.

The defendant, Rearick, was the agent of the Company to receive the goods at Sunbury and make delivery to the purchasers. For instance, goods purchased by Mrs. Dan Dailey were placed in one or more boxes, the boxes closed and marked as follows: "N. L. Rearick, Sunbury, Pa., for Mrs. Dan Dailey, 7." The figure "7" indicated to the agent the number of Mrs. Dan Dailey's order and was placed there for the purpose of preventing mistakes and facilitating delivery. All other boxes, for other purchasers, were similarly marked. Orders for brooms, however, were filled in the following manner; If one man, say John Smith, ordered one broom, which was included in his other order for other goods, a broom was selected at the place of business of said Company in Columbus to fill said order and a tag was marked in the following manner and tied by string to the

handle of said broom: "To N. L. Rearick, Sunbury, Pa., for John Smith, one broom, 4, the Citizens' Wholesale Supply Company, 336 to 376, Mount Vernon Avenue; 290 to 310 N. Grant Ave., Columbus, Ohio." If Smith, or any other customer ordered more than one broom the "1" before the word broom on the tag was changed to the number ordered and the tag tied to a string, which was wrapped around and tied to the handles of all the brooms ordered by that customer. All brooms, ordered by the several purchasers, were selected to fill the order and tagged in a similar manner to that just described. The brooms were then aggregated in bundles of 1 dozen each, or some such number, a paper wrapped around the straw part and around the paper and the bundles a twine was wound and tied to keep the bundle together. The brooms were tied solely for the
71 convenience in shipping. The brooms and the boxes, above described, were then shipped from Columbus, Ohio, by said Company over the Pennsylvania Railroad to its agent, N. L. Rearick, at Sunbury, Pennsylvania.

The Company kept no book accounts with the several persons from whom orders were taken, other than the order sheets themselves and extended no credit to such persons from whom the orders were taken, the goods being sold for cash to be paid for upon delivery at the residences of the several purchasers. All the goods shipped, in pursuance of said orders, were shipped to N. L. Rearick for delivery and he was held responsible therefor. They were consigned to Rearick and he alone had authority to obtain the same from the carrying railway company.

The orders taken by the saliciting agent were forwarded by the agent to the company, at Columbus, and after being filled were reforwarded by the company to Rearick, at Sunbury, and after delivery of the goods by Rearick were returned by him to the Company at Columbus.

Rearick is a citizen of the United States and state of Pennsylvania and is a General Agent at a fixed salary for the said supply company. As such agent it is his duty, among other things, to make the delivery of the goods shipped by said company into his district for the purpose of filling orders previously taken by the soliciting agent. In the discharge of his duty on the 14th of April, 1902, he received at Sunbury, a car of goods from Columbus, Ohio, opened the car and with the assistance of J. S. Kunkel, the soliciting agent, delivered the goods to purchasers at their residences, in the said borough, in the following manner: The boxes marked for persons living in a selected locality were taken from the car and placed in a wagon, Kunkel in company with Rearick then took the
72 wagon with the goods to a selected locality and stopped at the houses of the respective purchasers. At the house of each purchaser Kunkel took from the wagon the boxes marked for such purchaser and delivered them and received from such purchaser payment therefor. The money collected by Kunkel was turned over by him to the defendant, who, after the completion of the delivery, sent the money to his principals at Columbus. On opening the car, for the purpose of making delivery, the defendant

cut the twine that bound the brooms together in bundles and unwrapped the paper from the same. The brooms were then delivered in the same manner and at the same time as the boxes, each person receiving the broom or brooms that had been marked for him and appropriated to his order in Columbus, as above described. The boxes and brooms were delivered only to those who had ordered them. Each purchaser had a right to examine the goods when delivered and if the same was not equal to the sample, shown by the soliciting agent, at the time the order was taken, could refuse to accept them. The orders show that they were given by the Citizens Wholesale Supply Company, of Columbus, Ohio. No goods were shipped to the defendant by the company except to fill the orders taken by Kunkel.

The defendant, while engaged in delivery — goods, as above described, was arrested and was taken before a justice of the peace, charged with a violation of an ordinance of the borough of Sunbury and, after a trial before said justice, was sentenced to pay a fine of twenty-five dollars and costs, or stand committed to the jail of the County of Northumberland for a period of thirty days until the said finding and costs were paid.

The ordinance, under which the defendant was convicted, was approved December 9, 1899, and is entitled "An Ordinance,
73 To provide for the licensing of canvassers and all other persons who sell at retail, by sample or otherwise, or who solicit orders at retail, or who solicit orders for, sell or deliver at retail, either on the streets or by traveling from house to house within the limits of the borough of Sunbury, any books, paintings, foreign or domestic goods, wares, merchandise or fruits, not of their own production or manufacture, and imposing a penalty for a violation of this ordinance."

The first section provides that "It shall be unlawful for any person or persons to sell at retail, by sample or otherwise, or to solicit orders at retail, or to solicit orders for, sell or deliver at retail, either on the street or by traveling from house to house within the limits of the borough of Sunbury, any books, paintings, foreign or domestic goods, wares, merchandize or fruits not of their own production or manufacture without having first obtained from the Chief Burgess of the borough of Sunbury a license for such purpose."

The second section fixes the prices of said license as follows; "For one day two dollars; for one week ten dollars; for one month twenty dollars; for three months fifty dollars; for six months one hundred dollars; for one year one hundred and fifty dollars." The third section provides the penalty for the violation of sections one or two. The fourth section defines the word retail as meaning small quantities, such as are usually immediately called for by customers.

We confess our inability to harmonize some of the decisions of the Federal Courts, in cases involving the same principle as are involved in the facts before us, with the decisions of the Appellate Courts of our own state.

74 In the Spain case, reported in the 4th Volume of the Federal Reporter, at page 208, Judge Bond, of the Circuit Court,

E. D. North Carolina, held, that where manufacturers of household goods of West Virginia sent their agents into North Carolina to sell goods by sample on the installment plan, the goods to be delivered to each purchaser by the agent afterwards, the fact that the goods were to be delivered by the agent does not make him liable to pay a tax as a peddler, as prescribed by the laws of that state. In that case the method of the agent was to carry samples from door to door and the householder, or purchaser, ordered such articles as he desired by written order direct from the manufacturer, at Charleston, West Virginia. When the purchaser's orders reached Charleston the variety of household articles were all packed in one or more boxes and were consigned to the agents, who took the orders to be by them delivered. The case was before the Court on an application for a writ of *habeas corpus*. There was no dispute about the facts. The Court held that the petitioner was engaged in interstate commerce; that the defendants had a right to sell and that the right to sell implies the obligation and right to deliver, that it is as much interstate commerce to do the one as the other, and that the Act of Assembly was unconstitutional as to citizens of other states because it was an attempt to regulate interstate commerce.

The same question was before Judge Reed, of the Circuit Court of the Western District of Pennsylvania, on petition of William Tyreman for a writ of *habeas corpus* to release him from imprisonment for the violation of an ordinance, in the city of Titusville, Pa., by delivering books sold by book canvassers. Tyreman was employed by a citizen of the state of New York, and doing business
75 in the city of New York, to deliver books sold by one Nichols and to collect the price therefor. These books had been sent to Tyreman from his principal's branch store room, or office, in the city of Pittsburg and he was arrested while engaged in his employment for failure to obtain a license, as required by an ordinance of the city of Titusville. Judge Reed says: The precise question was decided in favor of the petitioner, in the case of Spain, 47 Federal Reporter, 208 and affirms the principle that the right to sell implies the obligation and the right to deliver and that it is as much interstate commerce to do the one as the other.

A different view, however, seems to be taken and held by our Superior Court, in the case of New Castle *vs.* Cutler, 15 Superior Court 612, where the facts resemble, in many aspects, those of the case at bar. In that case a resident and citizen of Pennsylvania, representing a firm of grocers doing business in Ohio, went from house to house taking orders for the delivery of a few pounds of coffee or prunes, or a small number of brooms or bars of soap. It was arranged between the salesman and his firm that the orders should be taken for such quantities of goods that they could fill by delivering the coffee in two pound packages and the prunes in five pound packages, and not less than twenty-five bars of soap or three brooms were to be sold to any one purchaser. The goods were shipped in one car. The packages of coffee and prunes were placed in a box without lids. The soap was packed in boxes containing fifty bars each, and the brooms were tied in bundles to equal the aggregate

amount of all the orders. None of the packages were marked with the name of the purchaser, but were consigned to the firm. When the car arrived at its destination, a member of the firm delivered the goods to the salesman, who loaded the goods on a wagon and
76 delivered them to the purchasers. In making this delivery, the packages of two pounds of coffee and five pounds of prunes were not opened, but the bundles of brooms were untied to fill orders. Boxes of soap were opened when only twenty-five bars had been ordered. The city in which these deliveries were made, enacted an ordinance imposing a license tax on peddlers and persons travelling from house to house with goods for sale and on persons soliciting orders for goods, held

"1. That the ordinance was not repugnant to the interstate commerce clause of the constitution of the United States.

2. That the goods brought from Ohio had become incorporated and mixed with the mass of property in this state, and that the commerce in them had become the domestic commerce of Pennsylvania.

3. That the device of placing the small packages of coffee and prunes in large open boxes was a mere device to evade the laws of Pennsylvania.

4. That the salesman was liable for the license tax under the ordinance."

The point of difference, and one which may be important, between that case and one at bar, is, that in the Cutler case none of the packages were marked with the name of the purchaser but were consigned to the firm, while in the case at bar the boxes were consigned to the defendant, had his name stencilled thereon and also marked "for" purchaser.

The Supreme Court of the United States have decided in a number of cases, that a citizen of one state may sell his goods within the boundaries of another state and if the doctrine, that the right to sell implies the right and obligation to deliver is sound, it is difficult to see or understand why the conviction in New Castle *vs.*
77 Cutler could have been sustained. However, we feel bound to follow the authority of that case, as we understand it. There is nothing in the case to show that any of the goods were delivered in the original packages. The goods were shipped in one car but the packages of coffee and prunes were placed in boxes without lids; the soap was packed in boxes containing fifty bars each, while the brooms were tied in bundles to equal the aggregate of all the orders taken. In the present case the goods were shipped in the same car, each purchaser's groceries were placed in the box or boxes, designated with his name and number, and were delivered in the identical condition in which they were shipped, with the exception that the purchaser had the right of inspection before acceptance, which he could do by simply removing the lid or lids. This, in our judgment, was not a breaking of the original package and the goods thus delivered were, in our judgment, subjects of interstate commerce. A different method was adopted for the delivery of brooms. These had been aggregated in bundles of twelve or more

at Columbus. Each purchaser's broom was tagged with his name and when they reached Sunbury the bundles were opened and the purchaser's brooms taken therefrom as they were needed for delivery. This, we believe, was a breaking or destruction of the original package. Before delivery, therefore, they ceased to be subject of interstate commerce and became mingled with the common mass of property of the state and, therefore, subject to the laws and ordinances of the Commonwealth. While they had in a certain manner been designated, at Columbus, as property to be delivered to the persons whose names were on the respective tags and were delivered to the railroad company as a common carrier, yet they remained in the custody and control of the supply company, or their agent, the
78 defendant. The title to the brooms did not pass to the person who had ordered them until delivery at his home, and had been, by him, inspected and paid for. If the purchaser refused to accept or pay for his purchases the defendant's duty was to return the refused articles to his principals at Columbus. The place of sale, therefore, of these articles was the borough of Sunbury.

Being of the opinion that the defendant is guilty of a violation of said ordinances, in the sale of brooms as above described, the judgment of the justice of the peace, imposing a fine of twenty-five dollars and costs upon the said N. L. Rearick, is affirmed.

July 6, 1903.

VORIS AUTEN,
A. L. J. [SEAL.]

Same day an exception is noted and bill sealed for the defendant.

VORIS AUTEN,
A. L. J. [SEAL.]

Endorsement: No. 173 Mar. 1902 Quarter Sessions of Northumberland County. Commonwealth *v.* N. L. Rearick. Opinion of the Court July 9, 1903 filed J. A. McCarthy, Clark.

79 EXHIBIT "D."

Form 113—2-25-'01—1,000,000.

Sale No. 3. The Citizens' Wholesale Supply Company, Columbus, Ohio. $1.01.

L. $2.96. GENTLEMEN: Please ship me the following bill of goods ordered from your Salesman: R. $11.12.

Quantity.	L.	Amount.	Quantity.	R Bulk goods packed in 5, 10, 15, 20, 25 lb. Sizes.	Amount.
	Natural Leaf Tea		10	Roasted Gold R. Blend Coffee.	2.75
	Bask. Fired Jap. No. 1			" O. G. Java Blend	
	Uncol. Jap. No. 1			" African Java Blend	
	Young Hyson No. 1			" Old Govt. Java	
	Gunpowder No. 1			" African Java	
	Eng. Breakfast No. 1		1	Coffee Mill	.05 .34
	Oolong No. 1			Rosted Golden Rio	
	Ceylon No. 1			Axle Grease Golden Rule	
2	Baking Powder	.78	1	Celery Salt	.06 .25
	Pepper, Cayenne, Ground			Pepper, White, Ground	
	Allspice, Ground		2	" Black "	.06 .46
	Cloves "			Black Leather Dressing	
1	Cinnamon "	.56		Combination Tan Polish	
	Ginger Jam "			" Dressing & Polish	
	Mustard "			Patent Leather Polish	
	Mixed Spice "			French Blacking	
	Sage "			Furniture Polish	
	Nutmegs			Metal Polish	
	Citron			Silver Polish	
½	Vanilla Extract	.90		Stove Polish	
	Lemon "			Carpet Cleaner	
	Orange "			Cleaning Compound	
	Jam. Ginger "			Olive Oil	
	Celery "			Castor Oil, Pure	.11
	Almond "				
	Cream Tartar		1	Sugar H. Syrup	.59
	Cocoanut			Quinine	
	New Orleans Molasses		1	Cocoa, Cleveland	.04 .45
	Syrup R. C			Chocolate Sweet	
	Sewing Machine Oil		1	" Unsweetened	.04 .39
	Bicycle Lub. or Illum. Oil			Brooms—Our Special	
	Harness Oil			Bushel Baskets	
	1,000 Mile Axle Oil			Clothes Baskets	
	Engine Oil			Hampers	
	Sani-Tari Skin Soap			Market Baskets	
	Sapo de Castillio			Lye, Concentrated	
	Glycerine Soap			Bees Wax	
	Distilled Pine Tar Soap			Macaroni	
	Cold Cream			Spaghetti	
	Camphor Ice			Vermicelli	
	Glycerine, Pure		1	qt. Prepared Mustard	.01 .13
	Hazeline			Mason Jars, Quarts	
	Witch Hazel			Cigars	
	Hair Tonic			Stogies	
	Petrolatum, Prep. or Plain		5	Prunes, California Silver	.03 .65
	Rose Geranium Jelly		5	Peaches Fcy. Evaporated	.05 .85
	Shampooing Liquid				
	Tooth Powder				
	Toilet or Face Powder				

80

Quantity.		Amount.
	Lilac Salts	
	Perfumes Imp. and Domestic	
	Toilet Waters Imp. and Dom.	
✓ 1	Bluing Liquid	.33
	Box Blue	
	Ball Blue, Diamond	
	Indigo	
	Aqua Ammonia	
	Laundry	
✓ 6	6 lb. Gloss Starch No. 1	.39
	Sulphur No. 1	
	Sealing Wax	
	Sarsaparilla	
	Old Colony	
	Ink	

Quantity.		Amount.	
	Apricots California		
	Evaporated		
✓ 5	Raisins, Seeded No. 1	.03	.53
	Currants Eng. 1 lb. packs		
✓ 1	Corn Starch 1 lb. packs	.01	.07
5	Tapioca, Pearl	.03	.28
✓	" Granulated		
	Rice, Pearl, Japan		
	Sago		
	Rolled Oats		
✓ 1	Corn Only Cream	.07	1.25
	Barley, Pearl		
	Beans		
	Hominy, Flake		
	Can Opener		
	Tack Puller		
✓ 1	Bag salt table		.04
	Uncle Sam's Tar Soap		
✓ 1	Soda A. & H		.05
1	Crackers Carton E. B	.02	.24
4	5-lb. Bags Granulated Sugar		1.07
✓ 20	Off A Sugar		.95
	Total Amount		$14.08

Goods Shipped to be as Good as Sample Shown by Salesman.
Name, Mrs. C. A. Byerley
Postoffice Sunbury, Pa.

Endorsement.

If customer resides in country be sure to fill in below, otherwise collector cannot find if delivery notice should miscarry.
Direction from town ——.
Distance " " ——.
On direct road from town or X road ?
81 If X road, state direction from main road, and how far ——.
Local name of road on which customer resides ——.
Remarks : ——.
Collector will see that below is always filled out if any deductions.

Total Amount of Order.				
Should any article fail to deliver, itemize below.				
Total.....				
Should any articles be short, itemize below.				
Total.....				
Itemize below any other deductions.				
82 Total.....				
Total Deductions.....				

Balance paid
Of which is L $—— and R $——
Original Amount of C $——
Less Deductions, $——
True Amount, $——
Aggregated
Notified

No. 12 Date Mar. 12, 1902 Amount $14.08. Name Mrs. C. P. Byerly St. and No. Market Postoffice Sunbury, Pa. Delivery Point Residence Salesman J. S. Kunkle

When paid Collector will mark above "Paid" (stating how much), signing with his initials. (See Back Inside.)

83 EXHIBITS.

"EXHIBIT A."

COMMONWEALTH OF PENNSYLVANIA,
County of Northumberland, Borough of Sunbury, ss:

Before me, the subscriber, one of the Justices of the Peace in and for said County, personally came D. A. Breninghaus, who, being duly sworn according to the law, doth depose and say that N. L. Rearick on the 24th day of April, 1902, within the Borough of Sunbury in Northumberland County, Pennsylvania, sold at retail, by sample or otherwise, or solicited orders at retail and solicited orders form sold and delivered at retail, upon the streets and by traveling from house to house, foreign or domestic goods, wares and merchandise not of his own manufacture, without first having obtained from the Chief Burgess of Sunbury Borough, a license for such purpose, contrary to the ordinance of said Borough of Sunbury entitled "An Ordinance to provide for the licensing of canvassers, etc." approved December 9, 1899, and further saith not.

(Signed) D. A. BRENINGHAUS.

Sworn and subscribed before me this 14th day of April, 1902.
(Signed) J. P. CARPENTER.

EXHIBIT "B."

An Ordinance To provide for the licensing of canvassers and
84 all other persons who sell at retail, by sample or otherwise, or who solicit orders at retail, or who solicit orders for, sell or deliver at retail, either on the streets or by traveling from house to house within the limits of the Borough of Sunbury, any books, paintings, foreign or domestic goods, wares, merchandise or fruits, not of their own production or manufacture, and imposing a penalty for a violation of this ordinance.

SECTION 1. Be it enacted and ordained by the Borough of Sunbury, in town council assembled, and it is hereby enacted and ordained by the authority of the same, that after the passage of this ordinance it shall be unlawful for any person or persons to sell at retail, by sample or otherwise, or to solicit orders at retail, or to solicit orders for, sell or deliver at retail, either on the streets or by traveling from house to house within the limits of the Borough of Sunbury, any books, paintings; foreign or domestic goods, wares, merchandise or fruits, not of their own manufacture or production, without first obtaining from the Chief Burgess of the Borough of Sunbury a license for such purpose.

SECTION 2. The license fee required to be paid under this ordinance shall be as follows: for one day two dollars; for one week ten dollars; for one month twenty dollars; for three months fifty

dollars; for six months one hundred dollars; for one year one hundred and fifty dollars.

SECTION 3. Any person or persons violating this ordinance by selling, canvassing, soliciting or delivering as aforesaid, without first — obtained and paid for a license as required in sections one and two of this ordinance, shall, upon conviction thereof before any Magistrate or Justice of the Peace residing in the said Borough, forfeit and pay a fine not exceeding fifty dollars and not less than twenty-five dollars, for the use of the Borough aforesaid, for each and every offense together with costs of prosecution; the costs of the Magistrate, Justice of the Peace and Constable to be the same as the costs fixed by law for them in similar cases. And any person or persons so convicted and fined, in default of payment thereof together with costs aforesaid, shall be forthwith confined in the common jail for the County of Northumberland, for a period of not less than fifteen and not more than ninety days, until such time as the costs and fine imposed, together with the prison charges accrued, be fully paid and satisfied.

SECTION 4. The word "retail" as used in this ordinance shall be construed to mean in small quantities, such as are usually immediately called for by customers.

SECTION 5. All ordinances or parts of ordinances inconsistent herewith be and the same — hereby repealed.

Approved December 9, 1899.

P. H. MOORE,
Chief Burgess.

EXHIBIT "C."

Return this Sheet.

The Citizens Wholesale Supply Company, Columbus, Ohio.

Orders No. 1 to No. 46, inclusive, sold by J. S. Kunkle for Delivery at Sunbury, Pa., on April 14 & 15, 1903.

No.	Tax.	L.	Drayage.	C.	R.	Total.
1	.....	67	.....	03	90	157
2	.....	.....	.....	26	335	335
3	.....	.....	.....	14	233	233
4	.....	182	.....	29	736	518
5	.....	.....	.....	11	268	268
6	.....	173	.....	21	758	931
7	.....	.....	.....	08	84	84
8	.....	....	.....	09	327	327
9	.....	178	.....	34	647	825
10	.....	38	.....	21	305	343
11	.....	72	.....	20	339	411
12	.....	296	.....	101	1112	1408
13	.....	117	.....	41	386	503
14	.....	122	....	13	88	210

15	.....	.....	.....	50	374	374
16	.....	90	.....	14	190	280
17	.....	.....	....	39	419	419
18	.....	47	....	23	300	347
19	.....	279	.....	28	475	754
20	.....	39	.....	10	244	283
21	.....	165	.....	12	195	360
22	.....	90	.....	52	398	488
23	.....	220	.....	32	671	891
24	.....	393	....	65	447	840
25	.....	97	.....	06	215	312
26	.....	61	.....	20	335	396
27	.....	131	.....	75	583	714
28	.....	75	....	11	156	231
29	.....	38	.....	....	281	319
30	.....	35	.....	27	499	534
31	.....	743	.....	42	358	1101
32	....	.....	.....	40	275	275
33	.....	78	....	09	353	431
34	.....	.....	.....	05	74	74
35	.....	155	.....	71	623	778
36	.....	56	....	25	176	232
37	.....	.....	.....	13	203	203
87						
38	.....	135	.....	44	627	762
39	.....	164	.....	59	438	602
40	.....	480	.....	88	860	1340
41	.....	.....	.....	08	126	126
42	.....	375	.....	66	544	919
43	.....	422	.....	34	305	727
44	.....	.....	.....	04	106	106
45	.....	236	.....	32	481	717
46	.....	275	.....	09	39	314
	Forward...	6124		1364	17078	23202

Endorsement on this sheet.

Form 107—100000—1-19-'01.

$—. ——, —— —, 19—.

Received of Citizens Wholesale Supply Company, per —— —— Collector, — dollars in full of commissions due on orders sold and delivered as per list on opposite side of this sheet.

—— ——.

(In pencil:) Sunbury, Pa. 4-14-'02 20.

Return this Sheet.

The Citizens Wholesale Supply Company, Columbus, Ohio.

Orders No. 47 to No. 68, inclusive, sold by J. S. Kunkle for Delivery at Sunbury, Pa., on Apr. 14 & 15, 1902.

No.	Tax.	L.	Drayage.	C.	R.	Total.
		6124	.....	1364	17078	23202
47	.....	158	.....	28	322	480
48	.....	294	.....	19	174	468
49	.....	33	.....	13	190	223
50	.....	109	.....	02	24	133
51	.....	.....	.....	18	214	214
52	.....	342	.....	01	146	488
88						
53	.....	57	.....	14	138	195
54	.....	33	.....	29	365	398
55	.....	131	.....	22	315	446
56	.....	95	.....	12	587	682
57	.....	.....	.....	24	253	25
58	.....	215	.....	17	107	322
59	.....	223	.....	33	294	517
60	.....	.....	.....	40	275	275
61	.....	395	.....	63	603	998
62	.....	118	.....	38	310	428
63	.....	206	.....	47	375	581
64	.....	266	.....	26	229	495
65	.....	165	.....	18	283	448
66	.....	.....	.....	21	200	200
67	.....	108	.....	04	83	263
68	.....	57	.....	11	256	313
		9201	.....	1864	22821	32022
		30				
		276030				
		1864				
		4624				

Endorsement.

Form 107—100000—1-19-'01.

$46.24. SUNBURY, PA., *April* 15, 1902.

Received of Citizens Wholesale Supply Company, per N. L. Rearick Collector 46 24/100 dollars in full for commissions due on orders sold and delivered as per list on opposite side of this sheet.

J. S. KUNKLE.

89 *Certificate of Clerk of Quarter Sessions.*

COMMONWEALTH OF PENNSYLVANIA, *County of Northumberland, ss:*

[SEAL.]

I, James A. McCarthy, Clerk of the Court of Quarter Sessions of the Peace in and for said County, do hereby certify that the foregoing is a fully, true and correct copy of the whole Record of the case, Commonwealth *vs.* N. L. Rearick, so full and entire as the same remains of Record before the said Court, at No. 173 May Sessions A. D. 1902.

In Testimony whereof, I have hereunto set my hand and affixed the Seal of said Court this 4th day of August A. D. 1903.

JAMES A. McCARTHY, *Clerk.*

90 STATE OF PENNSYLVANIA, *County of Northumberland, ss:*

Among the Records and proceedings enrolled in the Court of Quarter Sessions of the Peace, in and for said County, to No. 173, May Sessions, 1902, *in re* Petition of N. L. Rearick for right to appeal from summary conviction, is contained the following:

Copy of Quarter Session Docket Entry.

In re Petition of N. L. REARICK for Right to Appeal from Summary Conviction. 173.

Walter Shipman.

June 30, 1902 Petition of N. L. Rearick praying the Court for the reasons set forth therein to grant him the right of appeal from the Summary conviction before J. P. Carpenter, Justice of the Peace aforesaid presented. And now, June 30, 1902, the foregoing petition read, and after due consideration an appeal is granted to the Petitioner as prayed for in the petition. The bail to be fixed for such appeal to be within the discretion of the Justice before whom the summary conviction was had. By the Court, Voris Auten, A. L. J., July 1, 1902, Transcript from Docket of J. P. Carpenter, J. P., and Recognizance in the sum of Three Hundred Dollars, with Walter Shipman as surety, filed. Jan. 26, 1903, continued P. C. Feb. 23, 1903, continued P. C.

91 Mar. 9, 1903, argued. Statement of facts filed. Same day Defendant's conclusion of law filed. March 23, 1903, Argued and C. A. V. July 9, 1903, Opinion of Court and answers to the Defendant's request for conclusions of Law, filed. The judgment of the Justice of the Peace imposing a fine of $25.00 and costs upon N. L. Rearick, is affirmed. Voris Auten, A. L. J. (Seal). Same day an exception is noted and bill sealed for the Defendant. Voris Auten, A. L. J. (Seal). July 27, 1903, defendant appeals to the Superior Court of Pennsylvania, and makes affidavit that appeal is not for delay, &c., and files bond in the sum of $200, with Max L. Mitchel

as surety. July 28, 1903, Certiorari from the Superior Court of Pennsylvania, sitting at Philadelphia, received and filed. Aug. 4, 1903, Record certified. Nov. 3, 1904, Remittitur from the Superior Court, received and filed, in which it appears that "Judgment is affirmed." May 25, 1905, Certiorari from the Superior Court received and filed. Returnable forthwith.

92 STATE OF PENNSYLVANIA, *County of Northumberland, ss:*

I, James A. McCarthy, Clerk of the Court of Quarter Sessions of the Peace, in and for Northumberland County, do hereby certify that the foregoing is a full, true and correct copy of the case therein stated, viz. *In re* petition of N. L. Rearick to appeal from summary conviction, recorded to No. 173, May Sessions, 1902, so full and entire as the same remains of Record in my said office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court, this 26th day of May, A. D. 1905.

[SEAL.] JAMES A. McCARTHY, *Clerk.*

93 UNITED STATES OF AMERICA, *State of Pennsylvania, ss:*

I, Alex. K. McClure, Prothonotary of the Superior Court of Pennsylvania, do hereby certify that the foregoing record pages 1 to 92 inclusive, is a true and faithful copy of the record and proceedings of the Superior Court of the State of Pennsylvania, in a certain suit therein pending wherein N. L. Rearick was appellant and the Commonwealth of Pennsylvania was appellee.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Superior Court of the State of Pennsylvania, at Philadelphia, the 12th day of June, 1905, and in the one hundred and twenty-ninth year of the Independence of the United States.

[Seal of the Superior Court of Pennsylvania.]

ALEX. K. McCLURE,
Prothonotary of the Superior Court of Pennsylvania.

94 I, Charles E. Rice, President Judge of the Superior Court of Pennsylvania, do hereby certify, That Alex. K. McClure, was, at the time of signing the annexed attestation, and now is, Prothonotary of the said Superior Court of Pennsylvania, sitting at Philadelphia, to whose acts, as such, full faith and credit are and ought to be given; and that the said attestation is in due form.

In witness whereof, I have hereunto subscribed my name this 12th day of June, one thousand nine hundred and five.

CHARLES E. RICE.

I, Alex. K. McClure, Prothonotary of the Superior Court of Pennsylvania, sitting at Philadelphia, do certify, That the Honorable Charles E. Rice, by whom the foregoing certificate was made and given, was, at the time of making and giving the same, and is now, President Judge of the Superior Court of Pennsylvania; to whose

acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that his signature, thereto subscribed, is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Superior Court of Pennsylvania, sitting at Philapelphia, this 12th day of June, one thousand nine hundred and five.

[Seal of the Superior Court of Pennsylvania.]

ALEX. K. McCLURE.

95 In the Superior Court of Pennsylvania, Sitting at Philadelphia, October Term, 1903.

No. 171.

COMMONWEALTH OF PENNSYLVANIA, Appellee,
vs.
N. L. REARICK, Appellant.

In the Supreme Court of the United States.

Assignments of Error.

Now comes N. L. Rearick, and in connection with the petition for a Writ of Error filed herein, respectfully submits that in the record, proceedings, decision, and final judgment of the Superior Court of the State of Pennsylvania in the above entitled matter there is manifest error in this, to wit:

First. The Superior Court erred in affirming and in not reversing the Court of Quarter Sessions of Northumberland County for refusing the defendant's first point, which point and the answer thereto are as follows:

"All the acts of the defendant complained of as illegal in this case, and for which he was arrested under the provisions of the ordinance of the Borough of Sunbury, approved December 9th, 1899, which ordinance is recited in the statement of facts agreed upon, were done in carrying on Inter-state Commerce, and the arrest of the defendant is illegal and void because the ordinance above referred to, so far as it applies to the defendant, is in restraint of Inter-state Commerce and is therefore a violation of Clause 3, Section 8 of Article 1 of the Constitution of the United States, which provides that 'Congress shall have power * * * to regulate commerce with foreign nations and among the several states and the Indian tribes.'"

Answer: "Refused."

96 Second. The Superior Court erred in affirming and in not reversing the Court of Quarter Sessions of Northumberland County for refusing the defendant's second point, which point and the answer thereto are as follows:

"The arrest of the defendant is illegal and void because the ordinance of December 9, 1899, as far as the defendant is concerned, is

in restraint of trade. It abridges the right, freedom and liberty of contract and for that reason violates Section 1 of the Fourteenth Amendment of the Constitution of the United States, which provides that 'No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.'"

Answer: "Refused."

Third. The Superior Court erred in affirming and in not reversing the court of Quarter Sessions of Northumberland County for refusing the defendant's third point, which point and the answer thereto are as follows:

"The arrest of the defendant is illegal and void because, so far as the defendant is concerned, the ordinance of December 9, 1899, is unconstitutional in that it discriminates between persons and denies the equal protection of the laws. It gives rights, privileges and immunities to some which it denies to others. It is in violation of the last clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States, which provides that 'No state * * * shall deny to any person within its jurisdiction the equal protection of the laws.'"

Answer: "Refused."

Fourth. The Superior Court erred in affirming and in not reversing the court of Quarter Sessions of Northumberland County for holding that, "Before delivery, therefore, they" (referring to the brooms) "ceased to be subjects of Interstate Commerce and became
97 mingled with the Common mass of property of the State, and therefore subject to the laws and ordinances of the Commonwealth."

Fifth. The Superior Court erred in affirming and in not reversing the Court of Quarter Sessions of Northumberland County for holding, that, "while they" (the brooms) "had in a certain manner been designated at Columbus as property to be delivered to the persons whose names were on the respective tags, and were delivered to the railroad company as a common carrier, yet they remained in the custody and control of the company or their agent, the defendant. The title to the brooms did not pass to the person who had ordered them until delivered at his house, and they had been inspected and paid for. If the purchaser refused to accept and pay for his purchase the defendant's duty was to return the refused articles to his principal at Columbus. The place of sale therefore of these articles was the borough of Sunbury."

Sixth. The Superior Court erred in affirming and in not reversing the Court of Quarter Sessions of Northumberland County for affirming and refusing to reverse the judgment of the Justice of the Peace, imposing a fine of $25.00 and costs upon N. L. Rearick, the defendant and appellant, in this case, and committing said Rearick to the jail of Northumberland County, Pennsylvania, until said fine and costs were paid.

Seventh. The Superior Court erred in holding, that "the agreement as to the facts would not warrant a finding that the contract was that the goods should be shipped from Columbus by the Supply Company to the purchaser, and if such had been the contract it was not performed according to its terms. These were contracts made in Pennsylvania, to deliver goods at the residences of the purchasers in Pennsylvania. The contracts of sale were, judged by their provisions only, executory contracts relating to commerce within the state of Pennsylvania and were subject to the laws of this state * * * The performance of the contract was, therefore,
98 not necessarily concerned with Interstate Commerce."

Eighth. The Superior Court erred in holding, that, "We are of the opinion that the facts agreed upon as to the delivery of the brooms rendered the transaction subject to state regulation."

Ninth. The Superior Court erred in holding, that, "The ordinance in question violates no right of the appellant guaranteed by the Fourteenth Amendment of the Constitution of the United States."

Tenth. The Superior Court erred in holding, that the license ordinance of the borough of Sunbury approved December 9, 1899, did not deny the equal protection of the laws to the appellant, by excepting from the operation persons who solicit orders for, or deliver, articles of their own production or manufacture, and persons who sell otherwise than at retail.

Eleventh. The Superior Court erred in affirming the judgment of the Court of Quarter Sessions of Northumberland County.

Twelfth. The Superior Court erred in not reversing the judgment of the Court of Quarter Sessions of Northumberland County.

PHILEMON S. KARSHNER,
MAX L. MITCHELL,
Attorneys for N. L. Rearick, Appellant.

Endorsed on cover: File No. 19801. Pennsylvania Superior Court. Term No. 299. N. L. Rearick, Plaintiff in Error *vs.* The Commonwealth of Pennsylvania. Filed June 13th, 1905. File No. 19801.